

**PLAN FOR THE IMPLEMENTATION OF
ASSEMBLY BILLS 1807 AND 3219**

**REVISED
FEBRUARY, 1987**



ENVIRONMENTAL HAZARDS ASSESSMENT PROGRAM

**State of California
Department of Food and Agriculture
Division of Pest Management, Environmental
Protection and Worker Safety
Environmental Monitoring and Pest Management Branch
1220 N Street, Room A-149
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**Prepared by
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ENVIRONMENTAL HAZARDS ASSESSMENT PROGRAM

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)
PLAN FOR THE IMPLEMENTATION OF ASSEMBLY BILLS
1807 AND 3219

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I. INTRODUCTION

In September, 1983, the Governor signed into law Assembly Bill 1807, authored by Assemblywoman Sally Tanner, Chairwoman of the Assembly Committee on Environmental Safety and Toxic Materials. This bill was later augmented by Assembly Bill 3219 (signed into law September, 1984, also authored by Tanner), which clarified the Food and Agricultural Code amendments mandated in Assembly Bill 1807. These bills, which will be referred to collectively as AB 1807, direct the CDFA (Food and Agricultural Code Division 7, Chapter 3, Article 1.5, Section 14021 et seq.) and the Air Resources Board (Health and Safety Code Part 2, Division 26, Chapter 3.5, Section 39650 et seq.) to declare and regulate as a toxic air contaminant (TAC) an air pollutant which "...may cause or contribute to an increase in serious illness, or which may pose a present or potential hazard to human health." While the Air Resources Board (ARB) is assigned the task of regulating toxic air contaminants in their industrial application, the CDFA has sole jurisdiction over the regulation of pesticides in their pesticidal uses. Under AB 1807, a pesticide is designated as "any economic poison as defined in Section 12753 of the Food and Agricultural Code" (see Appendix I). Appendix II contains copies of Assembly Bills 1807 and 3219.

II. OVERVIEW OF THE AB 1807 PROCESS

The CDFA's evaluation of a potential TAC entails conducting a review of the physical properties, environmental fate and human health effects of the candidate pesticide, determining levels of human exposure in the environment, and estimating the potential human health risk from those exposures. A report is then written and submitted to a nine member Scientific Review Panel (SRP) which reviews the scientific data contained in the report, scientific procedures and

methods used to support the data, and the conclusions and assessments upon which the report is based. After evaluating the report, the SRP may reject it if it finds the report "seriously deficient." In this event, the report must be revised and resubmitted to the Panel. After a report passes the SRP scientific review, and, if as a result of investigations the pesticide is officially designated a TAC, a permissible exposure level will be determined. After conducting public hearings and consultation meetings with the Department of Health Services (CDHS), the State Air Resources Board (ARB), and the Air Pollution Control Districts (APCDs) or Air Quality Management Districts (AQMDs) in the affected counties, the Director of the CDFA determines the need for and appropriate degree of regulation for the pesticide in question.

While pesticides will enter the review process at a rate of six each year, each pesticide is estimated to require approximately two years to advance from initial evaluation to the phase in which it is decided whether or not control measures are necessary. Pesticide candidate TACs will be added to this list until all pesticide active ingredients registered in California are evaluated.

III. IMPLEMENTATION RESPONSIBILITY

The responsibility for CDFA implementation of AB 1807 was formally assigned to the Environmental Monitoring and Pest Management (EM&PM) Branch. CDFA's Medical Toxicology, Pesticide Registration and Pesticide Enforcement Branches each have a role in implementation.

IV. AB 1807 IMPLEMENTATION

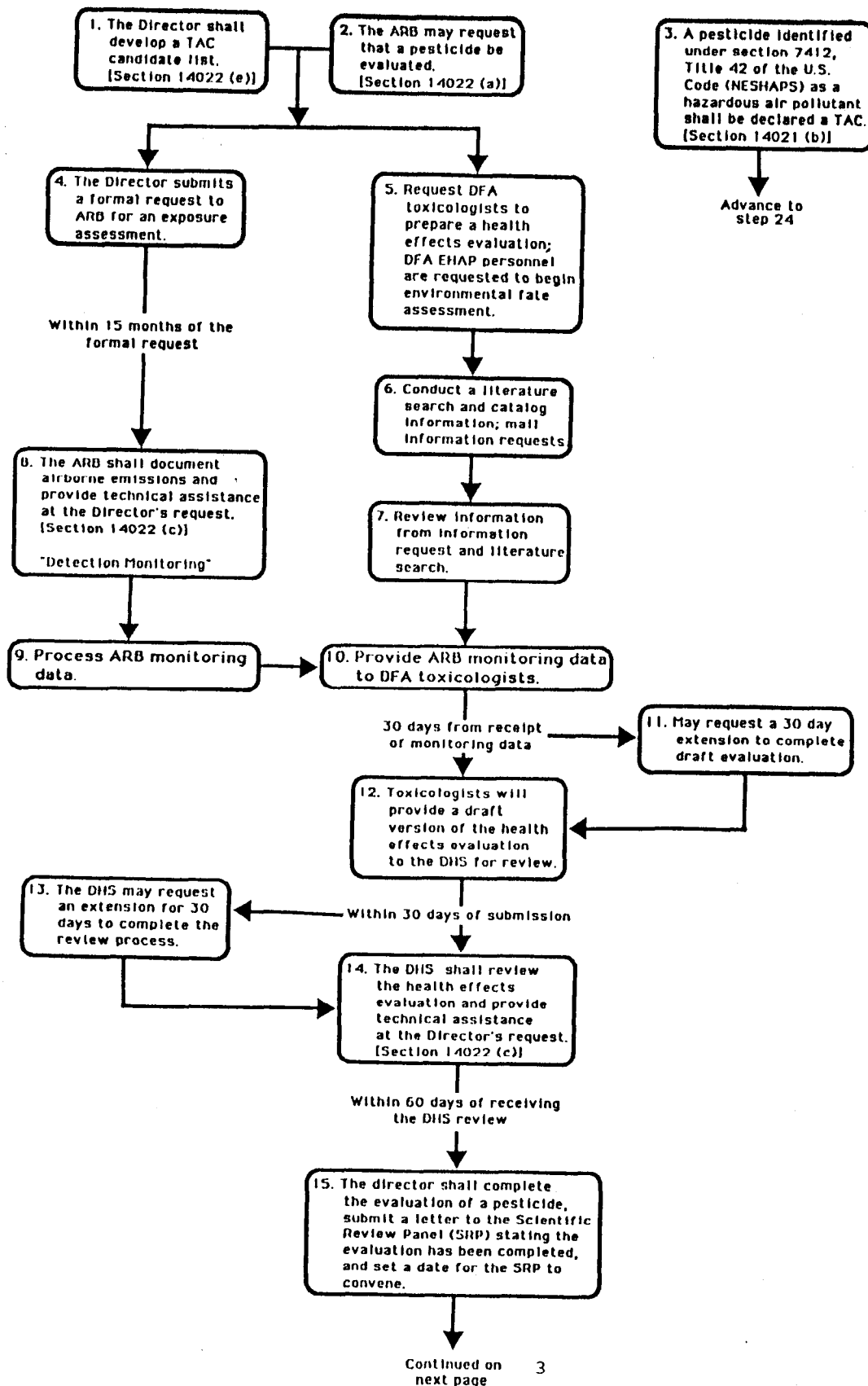
The flow chart in Figure 1 illustrates the process the CDFA will implement to achieve the regulation of TACs. This flow chart is separated into three phases: Phase I--The Evaluation Process, Phase II--The Report Process, and Phase III--The

FIGURE 1

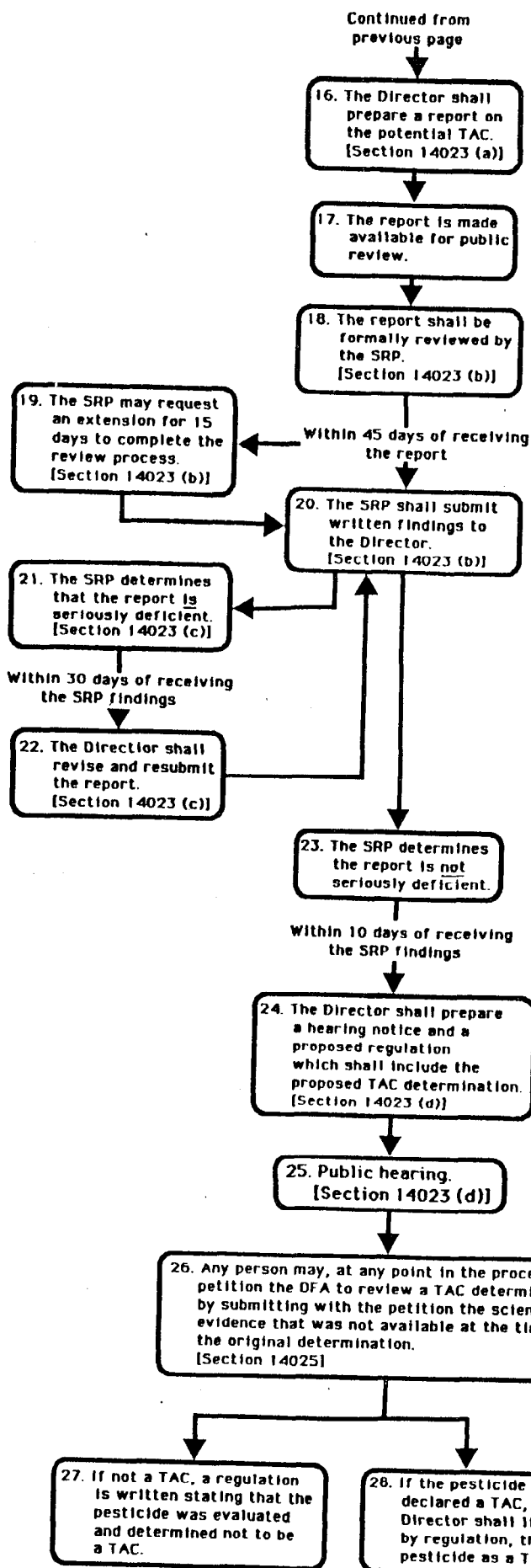
Three Phases in the Identification and Control of Toxic Air Contaminants (TAC)

Article 1.5, Chapter 3, Division 7 of the Food and Agricultural Code
(Formerly AB 1807/3219, Assembly member Tanner)

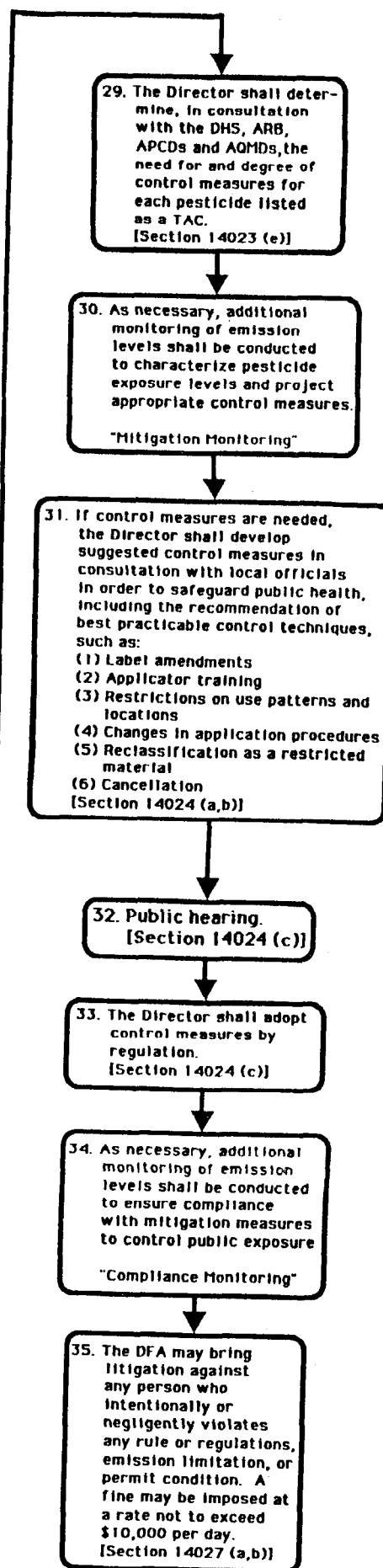
I. Phase One -- The Evaluation Process



II. Phase Two -- The Report Process



III. Phase Three -- The Control Process



Control Process. Each of these phases are described in detail and referenced by number to the flow chart steps for clarification. Figure 2 also illustrates the process a pesticide must go through during the course of evaluation, but this figure shows which agency/branch bears implementation responsibility and the amount of time allotted to task completion. Table 1 lists the anticipated dates of completion for some major steps in the implementation process.

V. PHASE I--THE EVALUATION PROCESS

A. Candidate List Creation (Steps 1 and 2)

The evaluation phase begins with the creation of a candidate list. The CDFA generally nominates all candidates, but the ARB may request that a substance be added to the list. Because there are approximately 700 active ingredients registered for use in California, each of which vary in their potential toxicity to the human population, a method for ranking pesticides prior to their placement on the list was established.

According to AB 1807, the Director must give priority to the evaluation and regulation of substances based on the following criteria:

- Risk of harm to public health
- Amount or potential amount of emissions
- Manner of usage of the pesticide in California
- Persistence in the atmosphere
- Ambient concentrations in the community

The first step in list compilation is taken when EM&PM's Pest Management Analysis and Planning Program creates a list of pesticides which, because of application method, are likely to be found in air. This list is then sent to the Medical Toxicology Branch which ranks the pesticides according to health effect and

AB 1807/3219 PROCESS

(The Example Pesticide is Ethylene Oxide)

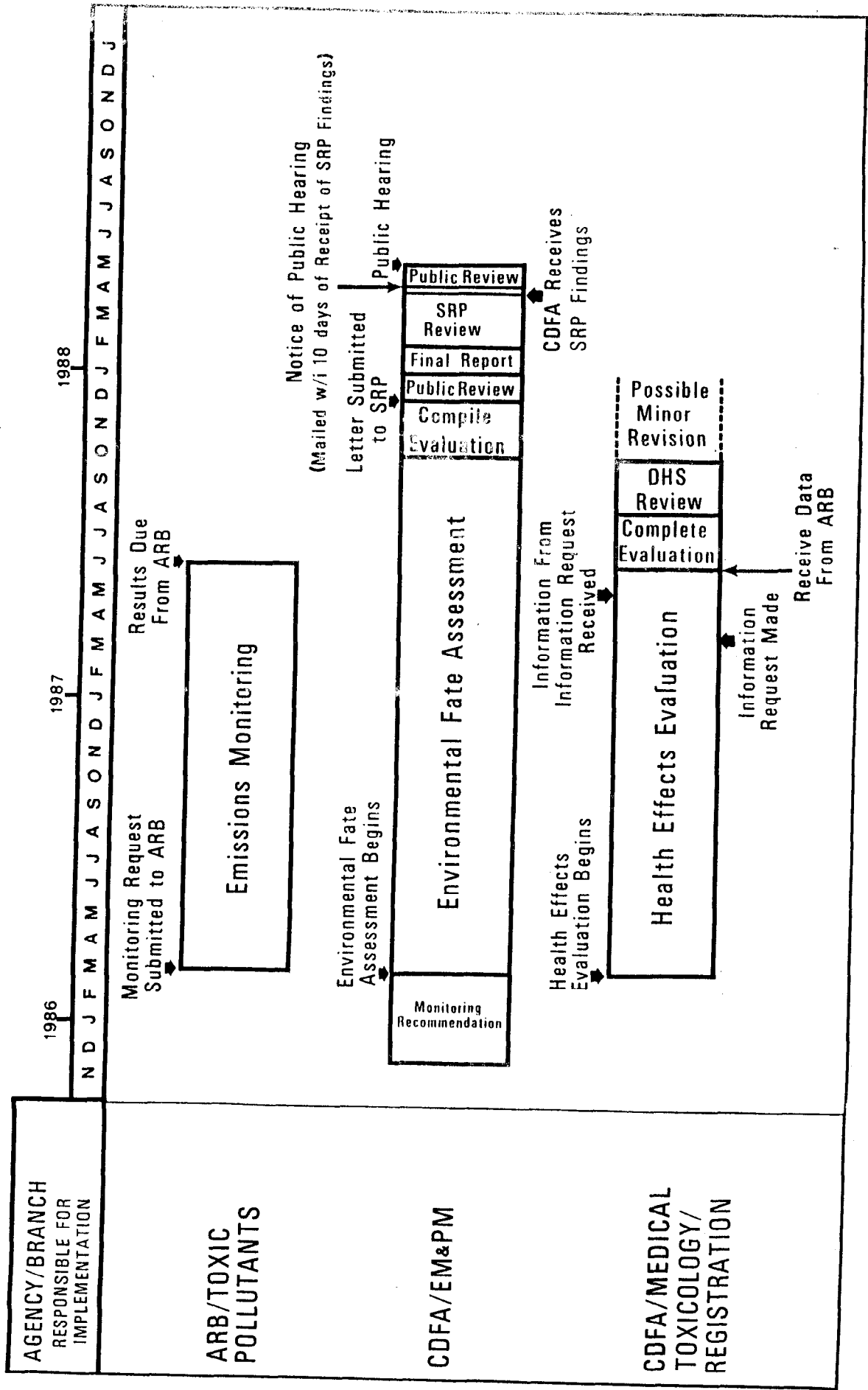


TABLE 1.
AB 1807/3219 TIME TABLE

PESTICIDE	MONITORING REQUEST MADE	INFORMATION REQUEST MADE	INFORMATION FROM INFORMATION REQUEST DUE	ARB DATA DUE	MEDICAL TOXICOLOGY FINISHES EVALUATION AND SENDS TO DHS	DHS REVIEW DUE	EM&PM COMPLETES EVALUATIONS & SENDS LETTER TO SRP	PUBLIC REVIEW COMPLETE	FINAL REPORT SENT TO SRP	SRP FINDINGS DUE
Ethyl Parathion	2/85	11/15/86	1/87	2/87	4/87	6/87	8/87	9/87	10/87	12/87
*EDB	9/85	11/15/86	1/87	---	12/86	2/87	4/87	5/87	6/87	8/87
*EDC	9/85	11/15/86	1/87	---	2/87	4/87	6/87	7/87	8/87	10/87
Methyl Parathion	11/85	1/15/87	3/87	4/87	6/87	8/87	10/87	11/87	12/87	2/88
*CCL ₄	1/86	---	---	---	---	---	---	---	**---	---
Ethylene Oxide	3/86	3/15/87	5/87	6/87	8/87	10/87	12/87	1/88	2/88	4/88
Methyl Bromide	5/86	5/15/87	7/87	8/87	10/87	12/87	2/88	3/88	4/88	6/88
Chloropicrin	7/86	7/15/87	9/87	10/87	12/87	2/88	4/88	5/88	6/88	8/88
Azinphosmethyl	9/86	9/15/87	11/87	12/87	2/88	4/88	6/88	7/88	8/88	10/88
S,S,S - Tributyl- phosphorotrithioate	11/86	11/15/87	1/88	2/88	4/88	6/88	8/88	9/88	10/88	12/88
Methomyl	1/87	1/15/88	3/88	4/88	6/88	8/88	10/88	11/88	12/88	2/89
Paraquat	3/87	3/15/88	5/88	6/88	8/88	10/88	12/88	1/89	2/89	4/89
Inorganic Arsenic	5/87	5/15/88	7/88	8/88	10/88	12/88	2/89	3/89	4/89	6/89
CCL ₄	*** 7/87	7/15/88	9/88	---	12/88	2/89	4/89	5/89	6/89	8/89

* Limited use of these pesticides made monitoring site identification impossible. It is anticipated CDFA will review ARB's reports on the industrial emissions of these substances and make a determination regarding the status of pesticidal emissions based partially on these reports.

** Date will be set following completion of ARB report unless all registrations are cancelled by the EPA in the interim.

*** A second monitoring request will probably not be submitted unless use patterns change.

returns the list to EM&PM. The EM&PM Branch may make some final adjustments to the list based on use and persistence.

B. National Emission Standards for Hazardous Air Pollutants (NESHAPs)

Substances (Step 3)

AB 1807 (Food and Agricultural Code Section 14021[b]) states that "Pesticides which have been identified as hazardous air pollutants pursuant to Section 7412 of Title 42 of the United States Code [Clean Air Act, NESHAPs] shall be identified by the Director as [TACs]." (See Appendix III for a copy of U.S. Code, Section 7412.) Substances which have pesticidal uses and are being evaluated by the EPA for their potential as hazardous air pollutants are listed in Table 2.

Table 2. Substances with pesticidal uses which are being evaluated under NESHAPs.

<u>Substance</u>	<u>EPA Action</u>	<u>Date of Federal Register Citation</u>
Inorganic Arsenic*	Proposed regulation	July 20, 1983
Carbon Tetrachloride*	Intent-to-List	August 13, 1985
Ethylene Oxide*	Intent-to-List	October 2, 1985
Ethylene Dichloride*	Intent-to-List	October 16, 1985
Cadmium	Intent-to-List	October 16, 1985
Methylene Chloride	Intent-to-Regulate	October 17, 1985

* On current CDFA candidate TAC list.

Because the federal status of a substance is subject to change at any point in the NESHAPs process prior to standard promulgation, a substance is not admitted into the AB 1807 process prior to this action. Substances currently regulated under

NESHAPs (CFR 40, Part 61, July 1985) are radon-222, beryllium, mercury, vinyl chloride, radionuclides, benzene and asbestos.

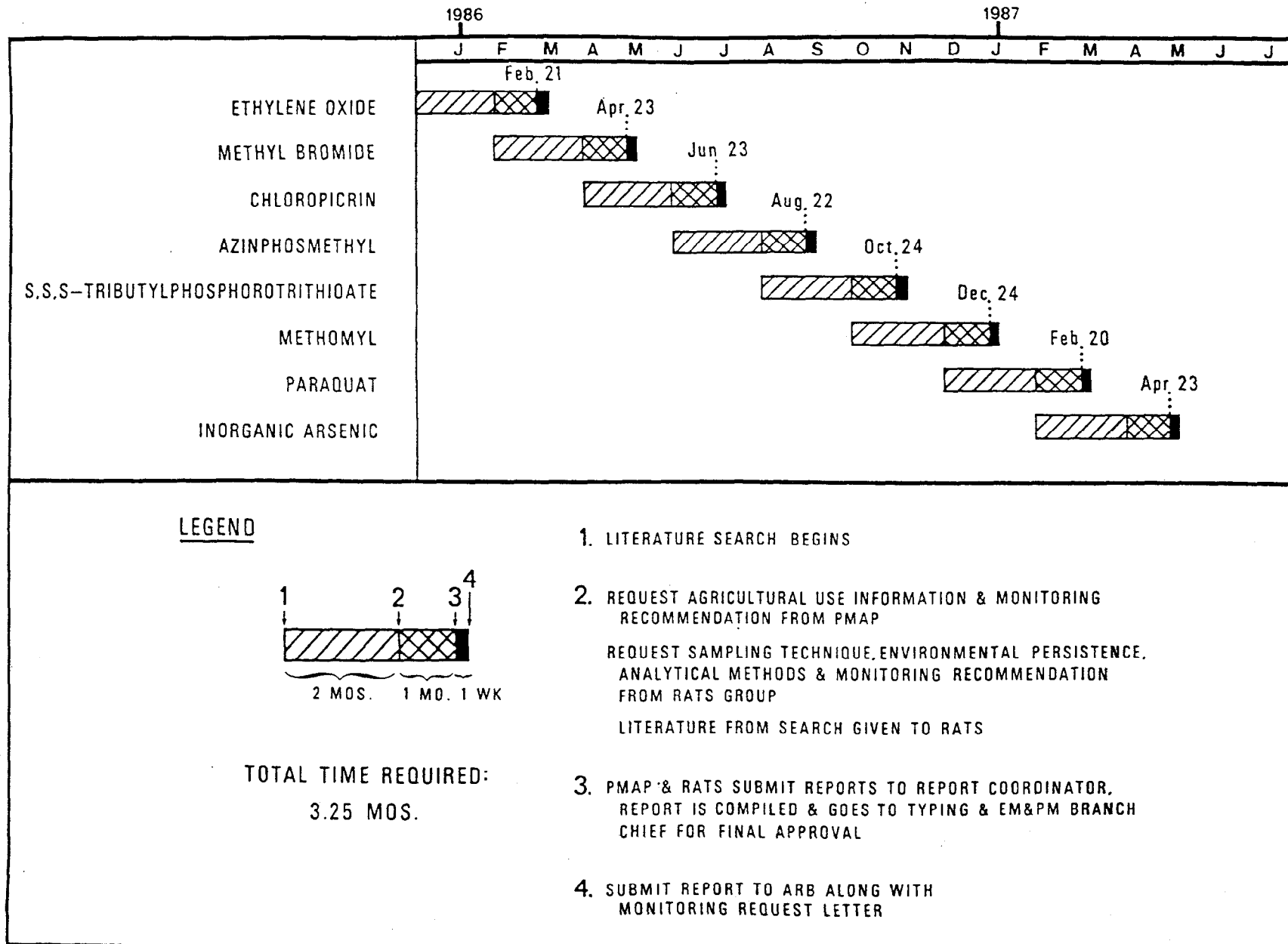
Following NESHAPs standard promulgation it is determined if the NESHAPs substance is an active ingredient in any California registered pesticides. If so, the Director does not prepare a report and submit it to the SRP for review, but declares the pesticide a TAC and prepares a hearing notice (Step 24) and proceeds with regulation writing and control measure development in the same manner as he would for any substance which enters the AB 1807 process (these steps will be described in more detail later in this text).

C. Monitoring Requests (Step 4)

Every 2 months a request to monitor a pesticide candidate TAC is sent to the ARB. This request is made through the issuance of two letters: one is sent to the ARB Chairperson and requests the ARB to monitor the airborne emission levels of a particular pesticide; the second letter is sent to the Toxic Pollutants Branch and includes a monitoring recommendation which outlines physical characteristics of the pesticides, describes use patterns, and provides a monitoring recommendation based on use, physical attributes and preferred sampling and analytical techniques. This recommendation generally pinpoints combinations of counties and months in which highest use is expected to occur, unless it is determined after investigation that not enough use is occurring to enable monitoring site identification. Examples of both letters are in Appendix IV. Figure 3 lists monitoring recommendation due dates, outlines the internal process which takes place when CDFA produces the monitoring recommendation letter, and shows the roles which the Research and Technical Services (RATS) and Pest Management Analysis and Planning Program (PMAP) groups play in identifying monitoring sites.

FIGURE 3

MONITORING RECOMMENDATION REPORT DUE DATES



If a monitoring site is adequately identified, the ARB is asked to provide the CDFA with a monitoring protocol and a quality control plan to assure collection of the necessary data. The ARB has 15 months in which to monitor the candidate TAC after receiving the monitoring request from the CDFA. Fifteen months are given "...because pesticide use varies with economic and seasonal factors, and airborne pesticide emissions usually arise from non-point sources" (letter to Sally Tanner from Clare Berryhill dated May 30, 1985).

If a site cannot be identified because use of the pesticide is limited, a monitoring request is still submitted to the ARB, but site identification becomes an ongoing process during what would otherwise be the monitoring period. If no site has been identified in the 15 month monitoring period and no emissions data received, the Director has the option of declaring the pesticide a TAC based on its potential, rather than actual, hazard to human health (Food and Agricultural Code Section 14022[a]).

D. Medical Toxicology and Registration Branch Roles (Steps 5-14)

At the same time the monitoring request goes to ARB, the Medical Toxicology Branch of CDFA is notified to begin a health effects evaluation of the potential TAC. Because "all available scientific data" is to be considered when formulating the evaluation, both a literature search and information request are conducted. The literature search on the health effects aspects of the substance under investigation is effected through contract to the University of California, Davis, Environmental Toxicology Library. The Registration Branch Library of CDFA then catalogs, indexes and stores all retrieved material.

The information request is mailed by the Registration Branch to members of the public and industry for each candidate TAC. Attached to this letter are the literature citations of all applicable health effects and environmental fate information sources available to the CDFA. (The environmental fate citations will be supplied to Registration by the EM&PM Branch.) The letter recipient is asked to provide references on the subject pesticide not contained in this list that are available in the open literature; industry is encouraged to submit information not available in the open literature as well. The Registration Branch has designated a lead person to handle all information request mailings and the processing of incoming responses. All responses will eventually be indexed, cataloged and stored in the Registration Branch Library.

Information request letter recipients requesting a copy of the draft report on the substance under investigation will receive reports when available.

After ARB submits the monitoring data to CDFA, the data will be given to the Medical Toxicology Branch which will complete the health risk evaluation 2 months subsequent to the receipt of data. The evaluation will then go to the CDHS for review; CDHS in turn has 2 months to review the report and return it with comment. Upon its return, the Medical Toxicology Branch will make revisions, if necessary, and send the report to the EM&PM Branch. The return of the CDHS evaluated document to the CDFA marks the beginning of the 90 day period (a 30 day extension can be added upon request), in which the Director has to complete the evaluation process. It is estimated, however, that this process will require only 60 days.

In the event that the ARB has already performed a health risk assessment on a substance (when used in an industrial context), but pesticide emission data are

available, the Medical Toxicology Branch may adopt the health effects data and simply substitute pesticide emission data in place of industrial emission data. The CDHS health effects report prepared in conjunction with the ARB would be used only after both a thorough review of the subject and an updated literature search were conducted by Medical Toxicology.

E. EM & PM Branch Role in Evaluation and Report Preparation (Steps 5, 15-17)

At the time the monitoring request is submitted to ARB, the EM&PM Branch will begin a literature search for information on the environmental fate of the substance under investigation. As previously stated, EM&PM will submit literature citations of applicable reports to the Registration Branch for compilation in the information request before it is mailed.

After reviewing all available information on environmental fate, EM&PM staff will write the environmental fate portion of the evaluation and, after the health effects evaluation is received from the Medical Toxicology Branch, both this and the environmental fate evaluation will be compiled by EM&PM to form the final evaluation document. This compilation is estimated to take approximately 2 months.

After evaluation document compilation takes place, a letter is sent to the SRP notifying them that the evaluation has been completed and a date for a joint organizational CDFA/SRP meeting is set. After evaluation completion, the CDFA sends the report out for a 30 day public review and, upon receipt of comments, prepares a final report on the candidate TAC. This final report goes to the SRP for review; the formal evaluation of the report occurs at a joint CDFA/ SRP meeting at the conclusion of SRP review. It is at the point of final report

preparation that the second phase of the process outlined on the flow chart--The Report Process-- is initiated.

VI. PHASE II--THE REPORT PROCESS

The report produced at this point in the AB 1807 process is to include an assessment of "... the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors of the substance. The report shall also contain an estimate of the levels of exposure which may cause or contribute to adverse health effects and, in the case where there is no threshold of significant adverse health effects, the range of risk to humans resulting from current or anticipated exposure" (Food and Agricultural Code, Section 14023[a]). The proposed TAC determination shall also be included in the report. CDFA staff estimates it will require 2 months to complete the report (this includes the 30 day public review period).

A. SRP Review of Reports (Steps 18-23)

The role of the SRP is to review the report submitted by the CDFA and assess "...the scientific data on which the report is based, the scientific procedures and methods used to support the data, and the conclusions and assessments on which the report is based" (Food and Agricultural Code Section 14023[b]). This panel is made up of recognized scientists in the fields of oncology, epidemiology, atmospheric science, biostatistics, toxicology, biochemistry, pathology and medicine. Panel members are appointed from a pool of nominees submitted by the President of the University of California, and are individuals who have held or currently hold academic or equivalent appointments at universities and their affiliates in California. Those who appoint panel members include the Secretary of the Environmental Affairs Agency, the Senate Committee

on Rules, and the Speaker of the Assembly. A list identifying current SRP members is in Appendix V.

The SRP reviews reports submitted by the CDFA and must send its written findings to the Director 45 calendar days after receiving the report, but may petition for a 15 working day extension. The panel may issue the finding that the report is "seriously deficient" (Food and Agricultural Code Section 14023[c]). In this event, the report must be revised by the CDFA and resubmitted to the panel within 30 days.

B. Public Hearings, TAC Determination and Rebuttal (Steps 24-28)

Ten working days following receipt of the SRP findings, assuming the report is not found seriously deficient, the Director is to prepare a hearing notice which includes both the proposed regulation and TAC determination. A public hearing is then held; following the hearing the Director lists, by regulation, both those pesticides determined to be TACs and those determined not to be TACs.

Anyone may petition the Department to review the TAC determination made by the Director at any point in the AB 1807 process (Food and Agricultural Code Section 14025). However, the petition must specify the additional "scientific evidence" which has bearing on the health effects of the pesticide which was not available at the time of the original TAC determination and "...any other evidence which would justify a revised determination."

VII. PHASE III--THE CONTROL PROCESS

A. Control Measure Development

Following pesticide listing as a TAC, the Director determines, in consultation with the CDHS, ARB and the APCDs or AQMDs in the affected counties, the need for and appropriate degree of control (Step 29). Anyone may at this point submit written information to the Director for his or her consideration in making control measure determinations (Food and Agricultural Code Section 14023[e]).

When control measures are necessary (Step 31), the Director is required to develop measures "...in consultation with the Agricultural Commissioners and Air Pollution Control Districts and Air Quality Management Districts in the affected counties..." These measures should be designed to reduce emissions sufficiently "...so that the source will not expose the public to the levels of exposure which may cause or contribute to significant adverse health effects." Where no demonstrable safe level or threshold of significant adverse health effects has been established, such as in the case of carcinogens, the control measures shall be designed to "...adequately prevent an endangerment of public health through the application of best practicable control techniques." Best practicable control techniques include, but are not limited to:

- label amendments
- applicator training
- restrictions on use patterns or locations
- changes in application procedures
- reclassification as a restricted material
- cancellation

In order to institute a mechanism for agency consultation, the CDFA established an informal agreement with the Technical Review Group (TRG) of the California Air Pollution Control Officer's Association (CAPCOA). The TRG has agreed to act as the interface between CAPCOA and the CDFA. Thus, when the time comes to develop control measures for specific toxic air contaminants, the CDFA will consult with the TRG and through this group, the local APCDs and AQMDs will become involved in the control measure development process.

B. Mitigation Monitoring (Step 30)

Monitoring above and beyond that performed in the risk identification phase (detection monitoring) will be conducted when necessary to characterize pesticide emissions for the purpose of establishing control measures. The Medical Toxicology group may at this time request additional studies from the pesticide registrants; information from these studies will be directed toward the definition of appropriate control measures.

C. Public Hearing, Adoption and Regulation (Steps 32 and 33)

A public hearing is conducted following control measure development which is in turn followed by adoption, through regulation, of control measures "...including application of the best practicable control techniques."

D. Compliance Monitoring (Step 34)

The CDFA may monitor sites on an as needed basis to determine if pesticide users are adhering to control measures.

E. Violations (Step 35)

According to law, any person who violates "...any rule or regulation, emission limitation, or permit condition pursuant to this article is liable for a civil penalty not to exceed [\$10,000] for each day in which the violation occurs." Any money collected under this section will be paid into the Department of Food and Agriculture fund. Liability under this section may be imposed only if it is established that the violation was the result of "...intentional or negligent conduct..." on the part of the accused.

VIII. CONCLUSION

Implementation of the plan presented on these pages will allow CDFA to make the desired progress in the evaluation of pesticides as toxic air contaminants. While some implementation mechanisms remain undefined at this time, it is safe to assume definition will take place before the need to use these mechanisms arrives. Implementation of AB 1807 is, and always will be, a dynamic process and this implementation plan is anticipated to change with time as more experience is gained.

APPENDIX I

Definition of "Economic Poison"

Chapter 2

ECONOMIC POISONS

Article	Section
1. Definitions	12751
2. General Provisions	12781
3. Exemptions	12801
4. License and Registration	12811
5. Labeling and Warranty	12851
6. Misbranding	12881
7. Adulteration	12911
8. Analysis	12931
9. Seizure	12961
10. Recommendations and Usage	12971
11. Violations	12991

Article 1

DEFINITIONS

Sec.
12751. Effect of definitions.
12752. Defoliating.
12753. Economic poison.
12754. Insect.
12755. Registrant.
12756. Regulating plant growth.
12757. Rodent.
12758. Spray adjuvant.
12759. Weed.

Library References

Druggists ~~C~~2 et seq.
Poisons ~~C~~2 et seq.

C.J.S. Druggists § 2 et seq.
C.J.S. Poisons § 2 et seq.

§ 12751. Effect of definitions

Unless the context otherwise requires, the definitions in this article govern the construction of this chapter. (Stats.1967, c. 15.)

Historical Note

Derivation: Agric.C.1933, § 1061 1951, c. 641, p. 1821, § 1; Stats.1905, c. 565, p. 1890, § 7).
(Stats.1933, c. 25, p. 237, § 1061, amended by Stats.1935, c. 334, p. 1157, § 1; Stats. 1921, c. 729, p. 1200, § 7.

Cross References

Disposition of money received under this chapter, see § 11513.
 Exemption of economic poison from livestock remedy provisions, see § 14202.
 General definitions, see § 25 et seq.
 Federal laws relating to economic poisons, see 7 U.S.C.A. § 135 et seq.
 Structural pest control, noncompliance with this article as ground for discipline of licensee, see Business and Professions Code § 8647.

Notes of Decisions

Construction and application 2
 Validity of prior laws 1

1. Validity of prior laws

Economic Poison Act of 1921, Stats. 1921, p. 1259, regulating sale and manufacture of economic poison, was not a delegation of judicial power, violative of Const. art. 3, or article 6, § 1, by conferring on director of agriculture duty of regulating manufacture, sale, and use of economic poisons, together with means of enforcing act by licensing or revoking licenses of dealers. *Gregory v. Hecke* (1925) 238 P. 787, 73 C.A. 268.

Economic Poison Act of 1921, Stats. 1921, p. 1259, regulating manufacture, sale and use of economic poison, was not violative of Const. art. 1, § 14, or Const. U.S. Amend. 14, prohibiting taking of private property without due process of law. *Id.*

General right to engage in a trade, profession or business is subject to the power, inherent in the state to make necessary rules and regulations respecting use and enjoyment of property necessary for the preservation of the public health,

morals, comfort, order, and safety, and such regulations do not deprive owners of property without due process of law. *Id.*

Economic poison manufacturer was estopped to question validity of Economic Poison Act of 1921, regulating sale, manufacture, and use of economic poison, where for several years he had registered his economic poison product, and had been licensed to manufacture and sell the same, and was enjoying protection of the statute at the time of challenging its constitutionality. *Id.*

2. Construction and application

This statute regarding economic poisons must be read as a whole, rather than by individual sections, in order to properly ascertain what it was intended to cover. *People v. Worst* (1943) 136 P.2d 137, 57 C.A.2d Supp. 1028.

Under statutory definition of economic poison, tuberculin used in diagnosing tuberculosis in cattle is not an "economic poison" required to be kept in a container to which is affixed imprinted label containing certain facts. *Thome v. Superior Court in and for Merced County* (1939) 90 P.2d 304, 32 C.A.2d 521.

§ 12752. Defoliating

"Defoliating" includes killing or artificially accelerating the drying of plant tissues, with or without causing abscission. (Stats. 1967, c. 15.)

Derivation: Agric.C.1933, § 1061 (see Derivation under § 12751).

Library References

Words and Phrases (Perm.Ed.)

§ 12753. Economic poison

"Economic poison" includes any of the following:

(a) Any spray adjuvant.

§ 12753

AGRICULTURAL CHEMICALS

Div. 7

(b) Any substance, or mixture of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any and all insects, fungi, bacteria, weeds, rodents, or predatory animals or any other form of plant or animal life which is, or which the director may declare to be, a pest, which may infest or be detrimental to vegetation, man, animals or households, or be present in any environment whatsoever. (Stats.1967, c. 15.)

Historical Note

Derivation: Agric.C.1933, § 1061 (see Agric.C.1933, § 1064.2, added by Stats. 1949, c. 505, p. 864, § 2.
Derivation under § 12751).

Cross References

Pesticide, see § 11404.
Pesticide chemical, see § 12503.

Library References

Words and Phrases (Perm.Ed.)

Notes of Decisions

I. In general

Where defendant treated bushes with certain vitamins to develop root growth and without obtaining license from state department of agriculture sold bushes for represented purpose of repelling gophers through natural underground root odors,

defendant did not violate statute regulating "economic poisons" defined in this section as including any substance or mixture of substances intended to be used for repelling rodents. *People v. Worst* (1943) 136 P.2d 137, 57 C.A.2d Supp. 102S.

§ 12754. Insect

"Insect" means any animal within the class of animals which are known as "Insecta" or any similar animal such as a centipede, spider, mite, tick, or louse. (Stats.1967, c. 15.)

Derivation: Agric.C.1933, § 1061 (see Derivation under § 12751).

Library References

Words and Phrases (Perm.Ed.)

§ 12755. Registrant

"Registrant" means a person that has registered an economic poison and has obtained a certificate of registration or license from the department. (Stats.1967, c. 15.)

Derivation: Agric.C.1933, § 1061 (see Derivation under § 12751).

Library References

Words and Phrases (Perm.Ed.)

§ 12756. Regulating plant growth

"Regulating plant growth" includes, but is not limited to, the use of any hormone, auxin, enzyme, or other material for reducing preharvest drop of fruit or the use of any material for promoting rooting of cuttings. (Stats.1967, c. 15.)

Derivation: Agric.C.1933, §§ 1061, 1062 (see Derivation under §§ 12751, 12801).

Library References

Words and Phrases (Perm.Ed.)

§ 12757. Rodent

"Rodent" means all members of the order Rodentia and all rabbits and hares. (Stats.1967, c. 15.)

Derivation: Agric.C.1933, § 1001 (see Derivation under § 12751).

Library References

Words and Phrases (Perm.Ed.)

§ 12758. Spray adjuvant

"Spray adjuvant" means any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent, with or without toxic properties of its own, which is intended to be used with another economic poison as an aid to the application or effect of the other economic poison, and sold in a package that is separate from that of the economic poison other than a spray adjuvant with which it is to be used. (Stats.1967, c. 15.)

Derivation: Agric.C.1933, § 1004.2, added by Stats.1949, c. 505, p. 804, § 2.

Library References

Words and Phrases (Perm.Ed.)

§ 12759. Weed

"Weed" means any plant which grows where not wanted. (Stats. 1967, c. 15.)

Derivation: Agric.C.1933, § 1061 (see Derivation under § 12751).

Cross References

Hazardous weeds, see Health and Safety Code § 14875.

Library References

Words and Phrases (Perm.Ed.)

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§ 12673

business advantage, the crop or commodity may be declared by the director to be a public nuisance and may be seized and held to prevent harvest and sale. The director shall hold the crop or commodity for 30 days, and if no action has been filed to contest the seizure, the director may order the crop or commodity be destroyed.

(Added by Stats.1985, c. 1404, p. —, § 2, urgency, eff. Oct. 1, 1985.)

ARTICLE 7. VIOLATIONS

Section

12672. Preharvest intervals, harvest prohibition upon noncompliance.

12673. Harvest of produce with impermissible pesticide residue prohibited.

§ 12671. Unlawful acts

It is unlawful for any person to pack, ship, or sell any produce that carries pesticide residue in excess of the permissible tolerance which is established by the director pursuant to this chapter.

(Amended by Stats.1974, c. 97, p. 212, § 1; Stats.1979, c. 732, p. 2569, § 17; Stats.1983, c. 717, p. —, § 12.)

1979 Amendment. Deleted the former second sentence, which read:

"The director or commissioner may prohibit the harvest of any produce that carries spray residue in excess of the

permissible tolerance which is established by the director pursuant to this chapter."

1983 Amendment. Substituted "pesticide residue" for "spray residue".

§ 12672. Preharvest intervals, harvest prohibition upon noncompliance

The director or commissioner may prohibit the harvest of any produce when a preharvest interval specified in the registered labeling of a pesticide applied to the produce has not been complied with. Except as provided in Section 12673, such harvest prohibition shall not extend beyond the expiration of the preharvest interval.

(Added by Stats.1979, c. 732, p. 2569, § 17.5.)

§ 12673. Harvest of produce with impermissible pesticide residue prohibited

The director or commissioner may prohibit the harvest of any produce that carries pesticide residue in excess of a permissible tolerance which is established by the director pursuant to this chapter.

(Added by Stats.1979, c. 732, p. 2569, § 17.8. Amended by Stats.1983, c. 717, p. —, § 13.)

1983 Amendment. Substituted "pesticide residue" for "spray residue".

CHAPTER 2. ECONOMIC POISONS

Article	Section
2.5. Agricultural Pest Control Research	12786
4.5. Assessments	12841
5.5. Container Code [Repealed]	12871
10.5. Pesticides and Worker Safety	12980
12. Penalties	12996
13. Cease and Desist	13101
14. Birth Defect Prevention	13121
15. The Pesticide Contamination Prevention Act [New]	13141

ARTICLE 1. DEFINITIONS

Section

12756. Regulating plant growth.

12757.5. Service container.

12758.5. Use-dilution.

Asterisks * * * indicate deletions by amendment

§ 12751

FOOD & AGRICULTURAL CODE

Cross References

Suspension of structural pest control licensee's right to work, see Business and Professions Code § 8617.

Administrative Code References

Economic poisons, see 3 Cal. Adm. Code 2330 et seq.
Restricted materials, see 3 Cal. Adm. Code 2450 et seq.

Law Review Commentaries

Women farmworkers in California. (1980) 10 Golden Gate L. Rev. (Women's Law Forum) 1117.

§ 12751. Effect of definitions

Administrative Code References

Worker safety, see 3 Cal. Adm. Code 2475 et seq.

§ 12753. Economic poison

Law Review Commentaries

Regulation of pesticide use in California: Legal problems in agriculture symposium. (1978) 11 U.C.D. Law Rev. 273.

§ 12755. Registrant

"Registrant" means a person that has registered an economic poison and has obtained a certificate of registration * * * from the department.

(Amended by Stats.1984, c. 717, p. —, § 1.)

§ 12756. Regulating plant growth

"Regulating plant growth" means the use of any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof.

However, it shall not include the use of substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

Also, "regulating plant growth" shall not be required to include at all the use of any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants and are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration.

(Added by Stats.1974, c. 686, p. 1551, § 2.)

1974 Legislation.

Former section 12756, was repealed by Stats.1974, c. 686, p. 1551, § 1.

Derivation: Former § 12756, added by Stats.1967, c. 15.

Library References

Poisons ¶2.

C.J.S. Poisons § 2 et seq.

§ 12757.5. Service container

"Service container" means any container, other than the original labeled container of a registered economic poison provided by the registrant, that is utilized to hold, store, or transport such economic poison or the use-dilution of such economic poison.

(Added by Stats.1978, c. 1048, p. 3245, § 1.)

§ 12758.5. Use-dilution

"Use-dilution" means a dilution specified on the label or labeling which produces the concentration of the economic poison for a particular purpose or effect.

(Added by Stats.1978, c. 1048, p. 3245, § 2.)

Underline indicates changes or additions by amendment

FOOD & AGRICULTURAL CODE

§ 12786

ARTICLE 2. GENERAL PROVISIONS

Administrative Code References

Restrictions on use of DDT and DDD, see 3 Cal.Adm. Code 2409.

§ 12783. Conflicts of interest

Administrative Code References

Conflict of interest prohibition, see 3 Cal.Adm. Code 2.

§ 12784. Money received

Any money which is received by the director pursuant to this chapter shall be paid into the State Treasury to the credit of the Department of Food and Agriculture Fund. Registration fees and assessments received pursuant to this chapter shall be expended only for the administration and enforcement of Chapters 2 (commencing with Section 12751), 3 (commencing with Section 14001), and 3.5 (commencing with Section 14101) of Division 7.

(Amended by Stats.1970, c. 1092, p. 1937, § 1.5; Stats.1984, c. 717, p. —, § 2.)

Cross References

Reimbursement for county costs in structural pest control, see § 12845.

ARTICLE 2.5. AGRICULTURAL PEST CONTROL RESEARCH

Section

- 12786. Legislative findings and declarations.
- 12786.5. Committee.
- 12787. Funding of agricultural pest control research program.
- 12787.5. General purpose.
- 12788. Specific purposes.
- 12788.5. Pest control research committee.
- 12789. Alternate pest control techniques.
- 12789.5. Committee membership.
- 12790. Proposals for research.
- 12790.5. Scientific peer review panel; review of proposals.
- 12791. Criteria in evaluating proposals.
- 12791.5. Panel report.
- 12792. Approval of proposals; reconsideration.
- 12792.5. Disbursement of funds.
- 12793. Research contracts; funding of proposals.
- 12793.5. Vacancies on committee.
- 12794. Per diem; mileage.
- 12794.5. Annual report.
- 12795. Final report.
- 12795.5. Agricultural pest control research account; continuance of former ethanol fuel revolving account in department of food and agriculture fund.
- 12795.6. Additional funds; annual appropriations.
- 12796. Duration of article.

Article 2.5 was added by Stats.1984, c. 1593, p. —, § 1.

Repeal

Article 2.5 is repealed by § 12796 on Jan. 1, 1989.

§ 12786. Legislative findings and declarations

The Legislature hereby finds and declares all of the following:

- (a) The continued viability of the agricultural economy is of paramount importance to the people of California.

Asterisks * * * indicate deletions by amendment

APPENDIX II

Assembly Bills 1807 and 3219

Assembly Bill No. 1807

CHAPTER 1047

An act to add Article 1.5 (commencing with Section 14021) to Chapter 3 of Division 7 of the Food and Agricultural Code, and to add Chapter 3.5 (commencing with Section 39650) to Part 2 of Division 26 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 23, 1983. Filed with Secretary of State September 23, 1983.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1807, Tanner. Air pollution: toxic air contaminants.

(1) Under existing law, the State Air Resources Board is required to adopt ambient air quality standards for each air basin in the state. Standards relating to health effects are required to be based upon the recommendations of the State Department of Health Services. Air pollution control districts and air quality management districts are required to adopt and enforce rules and regulations which assure that reasonable provision is made to achieve and maintain ambient air quality standards. The Department of Food and Agriculture has general authority to regulate pesticides.

This bill would require, upon request of the state board, the State Department of Health Services, in consultation with and with the participation of the state board, to evaluate and prepare recommendations on the health effects of substances, other than pesticides in their pesticidal use, emitted into the ambient air which may be determined to be toxic air contaminants, and would require the state board, in consultation with and with the participation of, the State Department of Health Services, to prepare a report which would serve as the basis for regulatory action and to determine, by regulation, whether a substance is a toxic air contaminant. The Director of Food and Agriculture, in consultation with the State Department of Health Services and the state board, would be required to evaluate health effects of pesticides which may be or are emitted into the ambient air and may be hazardous to human health. It would define the terms "toxic air contaminant," "airborne toxic control measure," and "pesticide." The state board would be required to adopt airborne toxic control measures to reduce emissions of toxic air contaminants from nonvehicular sources below the threshold exposure level, if any, at which no significant adverse health effects are anticipated.

The Director of Food and Agriculture would be required to determine which pesticides are toxic air contaminants and to determine, in consultation with the State Department of Health Services, the state board, and districts, the appropriate degree of control measures needed for pesticides identified as toxic air

contaminants. The director, in consultation with county agricultural commissioners and districts in the affected counties, would be required to develop and adopt control measures designed to reduce emissions from those pesticide sources.

The bill would require the state board, based on its determination of toxic air contaminants, to determine whether revisions are needed in vehicular emission standards and motor vehicle fuel additives standards to prevent harm to the public health from vehicular emissions.

The bill would impose a state-mandated local program by requiring districts to propose regulations enacting airborne toxic control measures on nonvehicular sources not later than 120 days after their adoption by the state board, except that districts would be authorized to adopt and enforce equally effective or more stringent control measures. A district would be required to adopt regulations implementing airborne toxic control measures on nonvehicular sources within 6 months after adoption by the state board. District new source review rules and regulations would be required to control emissions of toxic air contaminants, except that processors of food and fiber operating 6 months or less in any calendar year would be exempt until January 1, 1987.

The bill would require the appointment of a 9-member Scientific Review Panel on Toxic Air Contaminants to advise the state board in its evaluation of the health effects toxicity of substances.

The bill would make any person who violates any rule or regulation, emission limitation, or permit condition adopted to control a toxic air contaminant liable for a civil penalty not exceeding \$10,000 per day.

(2) The bill would declare legislative intent that the state board, the State Department of Health Services, and the Department of Food and Agriculture perform functions required by the bill in the 1983-84 fiscal year within their existing resources and budgetary authorizations.

(3) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Chapter 3.5 (commencing with Section 39650) is added to Part 2 of Division 26 of the Health and Safety Code, to read:

CHAPTER 3.5. TOXIC AIR CONTAMINANTS

Article 1. Findings, Declarations and Intent

39650. The Legislature finds and declares the following:

(a) That public health, safety, and welfare may be endangered by the emission into the ambient air of substances which are determined to be carcinogenic, teratogenic, mutagenic, or otherwise toxic or injurious to humans.

(b) That persons residing in California may be exposed to a multiplicity of toxic air contaminants from numerous sources which may act cumulatively to produce adverse effects, and that this phenomenon should be taken into account when evaluating the health effects of individual compounds.

(c) That it is the public policy of the state that emissions of toxic air contaminants should be controlled to levels which prevent harm to the public health.

(d) That the identification and regulation of toxic air contaminants should utilize the best available scientific evidence gathered from the public, private industry, the scientific community, and federal, state, and local agencies, and that the scientific research on which decisions related to health effects are based should be reviewed by a scientific review panel and members of the public.

(e) That, while absolute and undisputed scientific evidence may not be available to determine the exact nature and extent of risk from toxic air contaminants, it is necessary to take action to protect public health.

(f) That the state board has adopted regulations regarding the identification and control of toxic air contaminants, but that the statutory authority of the state board, the relationship of its proposed program to the activities of other agencies, and the role of scientific and public review of the regulations should be clarified by the Legislature.

(g) That the Department of Food and Agriculture has jurisdiction over pesticides to protect the public from environmentally harmful pesticides by regulating the registration and uses of pesticides.

(h) That while there is a statewide program to control levels of air contaminants subject to state and national ambient air quality standards, there is no specific statutory framework in this division for the evaluation and control of substances which may be toxic air contaminants.

(i) That the purpose of this chapter is to create a program which specifically addresses the evaluation and control of substances which may be toxic air contaminants and which complements existing authority to establish, achieve, and maintain ambient air quality standards.

(j) That this chapter is limited to toxic air contaminants and nothing in the chapter is to be construed as expanding or limiting the

authority of any agency or district concerning pesticides which are not identified as toxic air contaminants.

(k) That a statewide program to control toxic air contaminants is necessary and desirable in order to provide technical and scientific assistance to the districts, to achieve the earliest practicable control of toxic air contaminants, to promote the development and use of advanced control technologies and alternative processes and materials, to identify the toxic air contaminants of concern and determine the priorities of their control, and to minimize inconsistencies in protecting the public health in various areas of the state.

Article 2. Definitions

39655. For purposes of this chapter, "toxic air contaminant" means an air pollutant which may cause or contribute to an increase in mortality or an increase in serious illness, or which may pose a present or potential hazard to human health. Substances which have been identified as hazardous air pollutants pursuant to Section 7412 of Title 42 of the United States Code shall be identified by the state board as toxic air contaminants. Toxic air contaminants which are pesticides shall be regulated in their pesticidal use by the Department of Food and Agriculture pursuant to Article 1.5 (commencing with Section 14021) of Chapter 3 of Division 7 of the Food and Agricultural Code.

39656. For purposes of this chapter, "airborne toxic control measure" means recommended methods, and where appropriate a range of methods, of reducing the emissions of a toxic air contaminant, including, but not limited to, emission limitations, control technologies, the use of operational and maintenance conditions and closed system engineering.

39657. For purposes of this chapter, "pesticide" means any economic poison as defined by Section 12753 of the Food and Agricultural Code.

Article 3. Identification of Toxic Air Contaminants

39660. (a) Upon the request of the state board, the State Department of Health Services, in consultation with and with the participation of the state board, shall evaluate the health effects of and prepare recommendations regarding substances, other than pesticides in their pesticidal use, which may be or are emitted into the ambient air of California which may be determined to be toxic air contaminants.

(b) In conducting this evaluation, the State Department of Health Services shall consider all available scientific data, including, but not limited to, relevant data provided by the state board, the Occupational Safety and Health Division of the Department of

Industrial Relations, international and federal health agencies, private industry, academic researchers, and public health and environmental organizations.

(c) The evaluation shall assess the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors, of the substance.

The evaluation shall also contain an estimate of the levels of exposure which may cause or contribute to adverse health effects and, in the case where there is no threshold of significant adverse health effects, the range of risk to humans resulting from current or anticipated exposure.

(d) The State Department of Health Services shall submit its written evaluation and recommendations to the state board within 90 days after receiving the request of the state board pursuant to subdivision (a). The State Department of Health Services may, however, petition the state board for an extension of the deadline, not to exceed 30 days, setting forth its statement of the reasons which prevent the department from completing its evaluation and recommendations within 90 days. Upon receipt of a request for extension of, or noncompliance with, the deadline contained in this section, the state board shall immediately transmit to the Assembly Committee on Rules and the Senate Committee on Rules, for transmittal to the appropriate standing, select, or joint committee of the Legislature, a statement of reasons for extension of the deadline, along with copies of the department's statement of reasons which prevent it from completing its evaluation and recommendations in a timely manner.

(e) The state board or a district may request, and any person shall provide, information on any substance which is or may be under evaluation and which is manufactured, distributed, emitted, or used by the person of whom the request is made, in order to carry out its responsibilities pursuant to this chapter. To the extent practical, the state board or a district may collect the information in aggregate form or in any other manner designed to protect trade secrets.

Any person providing information pursuant to this subdivision may, at the time of submission, identify a portion of the information submitted to the state board or a district as a trade secret and shall support the claim of a trade secret, upon the written request of the state board or district board. Information supplied which is a trade secret, as specified in Section 6254.7 of the Government Code, and which is so marked at the time of submission, shall not be released to any member of the public. This section shall not be construed to prohibit the exchange of properly designated trade secrets between public agencies when those trade secrets are relevant and necessary to the exercise of their jurisdiction provided that the public agencies exchanging those trade secrets shall preserve the protections afforded that information by this paragraph.

Any information not identified as a trade secret shall be available

to the public unless exempted from disclosure by other provisions of law. The fact that information is claimed to be a trade secret is public information. Upon receipt of a request for the release of information which has been claimed to be a trade secret, the state board or district shall immediately notify the person who submitted the information, and shall determine whether or not the information claimed to be a trade secret is to be released to the public. The state board or district board, as the case may be, shall make its determination within 60 days after receiving the request for disclosure, but not before 30 days following the notification of the person who submitted the information. If the state board or district decides to make the information public, it shall provide the person who submitted the information 10 days' notice prior to public disclosure of the information.

(f) The State Department of Health Services and the state board shall give priority to the evaluation and regulation of substances based on factors related to the risk of harm to public health, amount or potential amount of emissions, manner of usage of the substance in California, persistence in the atmosphere, and ambient concentrations in the community.

39661. (a) Upon receipt of the evaluation and recommendations prepared pursuant to Section 39660, the state board, in consultation with and with the participation of the State Department of Health Services, shall prepare a report in a form which may serve as the basis for regulatory action regarding a particular substance pursuant to subdivisions (b) and (c) of Section 39662.

The report shall include and be developed in consideration of the evaluation and recommendations of the State Department of Health Services.

(b) The report, together with the scientific data on which the report is based, shall, with the exception of trade secrets, be made available to the public and shall be formally reviewed by the scientific review panel established pursuant to Section 39670. The panel shall review the scientific procedures and methods used to support the data, the data itself, and the conclusions and assessments on which the report is based. Any person may submit any information for consideration by the panel which may, at its discretion, receive oral testimony. The panel shall submit its written findings to the state board within 45 days after receiving the report. The panel may, however, petition the state board for an extension of the deadline, which may not exceed 15 working days.

(c) If the scientific review panel determines that the health effects report is seriously deficient, the report shall be returned to the state board, and the state board, in consultation with and with the participation of the State Department of Health Services, shall prepare revisions to the report which shall be resubmitted, within 30 days following receipt of the panel's determination, to the scientific review panel which shall review the report in conformance with

subdivision (b) prior to a formal proposal by the state board pursuant to Section 39662.

39662. (a) Within 10 working days following receipt of the findings of the scientific review panel pursuant to subdivision (c) of Section 39661, the state board shall prepare a hearing notice and a proposed regulation which shall include the proposed determination as to whether a substance is a toxic air contaminant.

(b) After conducting a public hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the state board shall list, by regulation, substances determined to be toxic air contaminants.

(c) If a substance is determined to be a toxic air contaminant, the regulation shall specify a threshold exposure level, if any, below which no significant adverse health effects are anticipated.

(d) In evaluating the nature of the adverse health effect and the range of risk to humans from exposure to a substance, the state board shall utilize scientific criteria which are protective of public health, consistent with current scientific data.

(e) Any person may petition the state board to review a determination made pursuant to this section. The petition shall specify the additional scientific evidence regarding the health effects of a substance which was not available at the time the original determination was made and any other evidence which would justify a revised determination.

Article 4. Control of Toxic Air Contaminants

39665. (a) Following adoption of the determinations pursuant to Section 39662, the executive officer of the state board shall, with the participation of the districts, and in consultation with affected sources and the interested public, prepare a report on the need and appropriate degree of regulation for each substance which the state board has determined to be a toxic air contaminant.

(b) The report shall address all of the following issues, to the extent data can reasonably be made available:

(1) The rate and extent of present and anticipated future emissions and estimated levels of human exposure.

(2) The stability, persistence, transformation products, dispersion potential, and other physical and chemical characteristics of the substance when present in the ambient air.

(3) The categories, numbers, and relative contribution of present or anticipated sources of the substance, including mobile, industrial, agricultural, and natural sources.

(4) The availability and technological feasibility of airborne toxic control measures to reduce or eliminate emissions, and the anticipated effect of airborne toxic control measures on levels of exposure.

(5) The approximate cost of each airborne toxic control measure

and the magnitude of risks posed by the substances as reflected by the amount of emissions from the source or category of sources.

(6) The availability, suitability, and relative efficacy of substitute compounds of a less hazardous nature.

(7) The potential adverse health, safety, or environmental impacts that may occur as a result of implementation of an airborne toxic control measure.

(c) The staff report, and relevant comments received during consultation with the districts, affected sources, and the public, shall be made available for public review and comment at least 45 days prior to the public hearing required by Section 39666.

39666. (a) Following a noticed public hearing, the state board shall adopt airborne toxic control measures to reduce emissions of toxic air contaminants from nonvehicular sources.

(b) For toxic air contaminants for which the state board has determined, pursuant to Section 39662, that there is a threshold exposure level below which no significant adverse health effects are anticipated, the airborne toxic control measure shall be designed, in consideration of the factors specified in subdivision (b) of Section 39665, to reduce emissions sufficiently so that the source will not result or contribute to ambient levels at or in excess of the threshold exposure.

(c) For toxic air contaminants for which the state board has not specified a threshold exposure level pursuant to Section 39662, the airborne toxic control measure shall be designed, in consideration of the factors specified in subdivision (b) of Section 39665, to reduce emissions to the lowest level achievable through application of best available control technology or a more effective control method, unless the state board or a district board determines, based on an assessment of risk, that an alternative level of emission reduction is adequate or necessary to prevent an endangerment of public health.

(d) Not later than 120 days after the adoption by the state board of an airborne toxic control measure pursuant to this section, the districts shall propose regulations enacting control measures on nonvehicular sources within their jurisdiction which meet the requirements of subdivisions (b), (c), and (e), except that a district may, at its option, adopt and enforce equally effective or more stringent control measures than the airborne toxic control measures adopted by the state board. A district shall adopt rules and regulations implementing airborne toxic control measures on nonvehicular sources within its jurisdiction in conformance with the requirements of subdivisions (b), (c), and (e), not later than six months following the adoption of airborne toxic control measures by the state board.

(e) District new source review rules and regulations shall require new or modified sources to control emissions of toxic air contaminants consistent with subdivisions (b), (c), and (d) except for processors of food and fiber that operate for six months or less in

any calendar year. The exception for processors of food and fiber shall become inoperative on January 1, 1987. On or before January 1, 1986, the state board, in consultation and with the participation of the Department of Food and Agriculture, shall report to the Legislature on the feasibility of implementation and the economic impact of this section on processors of food and fiber.

39667. Based on its determinations pursuant to Section 39662, the state board shall determine if revisions are needed in the emission standards for vehicular sources, or in the standards for motor vehicle fuel additives, adopted pursuant to Part 5 (commencing with Section 43000), in order to prevent harm to the public health from vehicular emissions.

Article 5. Scientific Review Panel

39670. (a) A nine-member Scientific Review Panel on Toxic Air Contaminants shall be appointed to advise the state board and the Department of Food and Agriculture in their evaluation of the health effects toxicity of substances pursuant to Article 3 (commencing with Section 39660) of this chapter and Article 1.5 (commencing with Section 14021) of Chapter 3 of Division 7 of the Food and Agricultural Code.

(b) The members of the panel shall be highly qualified and professionally active or engaged in the conduct of scientific research, and shall be appointed as follows for a term of three years:

(1) Five members shall be appointed by the Secretary of the Environmental Affairs Agency, one of whom shall be qualified as a pathologist, one of whom shall be qualified as an oncologist, one of whom shall be qualified as an epidemiologist, one of whom shall be qualified as an atmospheric scientist, and one who shall have relevant scientific experience and shall be experienced in the operation of scientific review or advisory bodies.

(2) Two members shall be appointed by the Senate Committee on Rules, one of whom shall be qualified as a biostatistician and one of whom shall be a physician or scientist specializing in occupational medicine.

(3) Two members shall be appointed by the Speaker of the Assembly, one of whom shall be qualified as a toxicologist and one of whom shall be qualified as a biochemist.

(4) Members of the panel shall be appointed from a pool of nominees submitted to each appointing body by the President of the University of California. The pool shall include, at a minimum, three nominees for each discipline represented on the panel, and shall include only individuals who hold, or have held, academic or equivalent appointments at universities and their affiliates in California.

(c) The panel may establish ad hoc committees, which may include other scientists, to assist it in performing its functions.

(d) Members of the panel, and any ad hoc committee established by the panel, shall submit annually a financial disclosure statement that includes a listing of income received within the preceding three years, including investments, grants, and consulting fees derived from individuals or businesses which might be affected by regulatory actions undertaken by the state board or districts pursuant to this chapter. The financial disclosure statements submitted pursuant to this subdivision are public information. Members of the panel shall be subject to the disqualification requirements of Section 87100 of the Government Code.

(e) Members of the panel shall receive one hundred dollars (\$100) per day for attending panel meetings, and shall be reimbursed for reasonable and necessary travel and other expenses incurred in the performance of their duties.

(f) The state board and the State Department of Health Services, and, in the case of pesticides, the Department of Food and Agriculture shall provide technical and clerical staff support to the panel.

Article 6. Penalties

39674. (a) Any person who violates any rule or regulation, emission limitation, or permit condition adopted pursuant to Article 4 (commencing with Section 39665) is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

(b) There is no liability under subdivision (a) if the person accused of the violation alleges by affirmative defense and establishes that the violation is caused by an act which was not the result of intentional or negligent conduct.

SEC. 2. Article 1.5 (commencing with Section 14021) is added to Chapter 3 of Division 7 of the Food and Agricultural Code, to read:

Article 1.5. Pesticides

14021. (a) As used in this article, "pesticide" means any economic poison as defined in Section 12753.

(b) For purposes of this article, "toxic air contaminant" means an air pollutant which may cause or contribute to an increase in mortality or an increase in serious illness, or which may pose a present or potential hazard to human health. Pesticides which have been identified as hazardous air pollutants pursuant to Section 7412 of Title 42 of the United States Code shall be identified by the director as toxic air contaminants.

14022. (a) In consultation with the State Department of Health Services and the State Air Resources Board, the director shall evaluate the health effects of pesticides which may be or are emitted into the ambient air of California and which may be determined to

be a toxic air contaminant which poses a present or potential hazard to human health. Upon request of the State Air Resources Board, the director shall include a pesticide for evaluation.

(b) In conducting this evaluation, the director shall consider all available scientific data, including, but not limited to, relevant data provided by the State Department of Health Services, the Occupational Safety and Health Division of the Department of Industrial Relations, international and federal health agencies, private industry, academic researchers, and public health and environmental organizations. At the request of the director, the State Air Resources Board shall document the level of airborne emissions and the State Department of Health Services shall provide an assessment of related health effects of pesticides which may be determined to pose a present or potential hazard and each agency shall provide technical assistance to the department as it conducts its evaluation.

(c) The director may request, and any person shall provide, information on any substance which is or may be under evaluation and which is manufactured, distributed, or used by the person to whom the request is made, in order to carry out his or her responsibilities pursuant to this chapter. Any person providing information pursuant to this subdivision shall, at the request of the director, identify that portion of the information submitted to the department which is a trade secret and, upon the request of the director, shall provide documentation to support the claim of the trade secret. Information supplied which is trade secret, as specified in Section 6254.7 of the Government Code, and which is so marked at the time of submission shall not be released to the public by the director, except in accordance with Section 1060 of the Evidence Code and Section 21160 of the Public Resources Code.

(d) The director shall give priority to the evaluation and regulation of substances based on factors related to the risk of harm to public health, amount or potential amount of emissions, manner of usage of the pesticide in California, persistence in the atmosphere, and ambient concentrations in the community.

14023. (a) Upon completion of the evaluation conducted pursuant to Section 14022, the director shall, in consultation and with the participation of the State Department of Health Services, prepare a report on the health effects of the pesticide which may be determined to be a toxic air contaminant which poses a present or potential hazard to human health due to airborne emission from its use. The report shall assess the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors, of the substance. The report shall also contain an estimate of the levels of exposure which may cause or contribute to adverse health effects and, in the case where there is no threshold of significant adverse health effects, the range of risk to humans, resulting from current or anticipated exposure. The report shall

include the findings of the State Department of Health Services. The report shall be made available to the public, subject to subdivision (c) of Section 14022.

(b) The report prepared pursuant to subdivision (a) shall be formally reviewed by the scientific review panel established according to Section 39670 of the Health and Safety Code. The director shall also make available the data deemed necessary to the scientific review panel, according to departmental procedures established to ensure confidentiality of proprietary information. The panel shall review, as appropriate, the scientific data on which the report is based, the scientific procedures and methods used to support the data, and the conclusions and assessments on which the report is based.

(c) If the scientific review panel determines that the health effects report is seriously deficient, the report shall be returned to the director who shall revise and resubmit the report to the panel prior to development of emission control measures.

(d) The director shall determine which pesticides are toxic air contaminants.

(e) The director shall determine, in consultation with the State Department of Health Services, the State Air Resources Board, and the air pollution control districts or air quality management districts in the affected counties, the need for and appropriate degree of control measures for each pesticide identified as a toxic air contaminant in subdivision (d). Any person may submit written information for consideration by the director in making his determinations pursuant to subdivisions (d) and (e).

14024. (a) For those pesticides for which a need for control measures has been determined pursuant to subdivision (e) of Section 14023 and pursuant to provisions of this code, the director, in consultation with the agricultural commissioners and air pollution control districts and air quality management districts in the affected counties, shall develop and adopt control measures designed to reduce emissions sufficiently so that the source will not expose the public to the levels of exposure which may cause or contribute to significant adverse health effects. Where no demonstrable safe level or threshold of significant adverse health effects has been established by the director, the control measures shall be designed to adequately prevent an endangerment of public health through the application of best practicable control techniques.

(b) Best practicable control techniques may include, but are not limited to, the following:

- (1) Label amendments.
- (2) Applicator training.
- (3) Restrictions on use patterns or locations.
- (4) Changes in application procedures.
- (5) Reclassification as a restricted material.
- (6) Cancellation.

14025. Any person may petition the department to review a determination made pursuant to this article. The petition shall specify the additional scientific evidence regarding the health effects of a pesticide which was not available at the time the original determination was made and any other evidence which would justify a revised determination.

14026. Nothing in this article shall be construed to limit or expand the department's authority regarding pesticides which are not determined to be toxic air contaminants.

SEC. 3. It is the intention of the Legislature, in the enactment of this act, that the State Air Resources Board, the State Department of Health Services, and the Department of Food and Agriculture shall perform the functions required by this act within their respective existing resources and budgetary authorizations during the 1983-84 fiscal year, by appropriating sufficient funds in Items 3400-001-001, 3400-001-044, 4260-001-001, 4260-001-044, 4260-001-455, 8570-001-001, 8570-001-111, 8570-001-890, 8570-101-001 and 8570-101-111 of the Budget Act of 1983 (Ch. 324, Stats. 1983).

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

Assembly Bill No. 3219

CHAPTER 1380

An act to amend Sections 14022, 14023, and 14024 of, and to add Section 14027 to, the Food and Agricultural Code, and to amend Section 39660 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 23, 1984. Filed with Secretary of State September 26, 1984.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3219, Tanner. Air pollution: toxic air contaminants.

(1) Existing law requires the Director of Food and Agriculture to evaluate the health effects of pesticides which may be toxic air contaminants, to prepare a report on the health effects of these pesticides for formal review by the Scientific Review Panel on Toxic Air Contaminants, to determine whether a pesticide is a toxic air contaminant, to determine the need for control measures for a pesticide which is a toxic air contaminant, and to develop and adopt control measures for these pesticides, as specified.

This bill would establish deadlines for the director's evaluation of health effects of these pesticides and for the scientific review panel's formal review of the director's report, as specified. The bill would require the director to conduct public hearings and to list, by regulation, which pesticides are determined to be toxic air contaminants. It would require the director to conduct public hearings when adopting control measures for a pesticide determined to be a toxic air contaminant.

(2) Under existing law, any person who violates any rule or regulation, emission limitation, or permit condition adopted to control a toxic air contaminant, other than a pesticide, is liable for a civil penalty not to exceed \$10,000 per day.

This bill would make similar civil penalties applicable to the violation of any rule or regulation, emission limitation, or permit condition of the Department of Food and Agriculture adopted to control a pesticide which is a toxic air contaminant and would require a court to consider specified factors in assessing the civil penalties.

(3) Under existing law, any person providing information to the state board, or an air pollution control district or an air quality management district, regarding toxic air contaminants which is a trade secret may identify the information as a trade secret, and the state board or district is prohibited from releasing the information so designated to any member of the public.

This bill would specify that, pursuant to rules of evidence, no information so designated as a trade secret can be for the purpose of concealing fraud or otherwise working an injustice.

The people of the State of California do enact as follows:

SECTION 1. Section 14022 of the Food and Agricultural Code is amended to read:

14022. (a) In consultation with the State Department of Health Services and the State Air Resources Board, the director shall evaluate the health effects of pesticides which may be or are emitted into the ambient air of California and which may be determined to be a toxic air contaminant which poses a present or potential hazard to human health. Upon request of the State Air Resources Board, the director shall include a pesticide for evaluation.

(b) The director shall complete the evaluation of a pesticide within 90 days after receiving the scientific data specified in subdivision (c) from the State Department of Health Services and the State Air Resources Board. The director may extend the 90-day deadline for a period not to exceed 30 days if the director transmits to the Assembly Committee on Rules and the Senate Committee on Rules, for transmittal to the appropriate standing, select, or joint committee of the Legislature, a statement of reasons for extension of the deadline.

(c) In conducting this evaluation, the director shall consider all available scientific data, including, but not limited to, relevant data provided by the State Department of Health Services, the Occupational Safety and Health Division of the Department of Industrial Relations, international and federal health agencies, private industry, academic researchers, and public health and environmental organizations. At the request of the director, the State Air Resources Board shall document the level of airborne emissions and the State Department of Health Services shall provide an assessment of related health effects of pesticides which may be determined to pose a present or potential hazard and each agency shall provide technical assistance to the department as it conducts its evaluation.

(d) The director may request, and any person shall provide, information on any substance which is or may be under evaluation and which is manufactured, distributed, or used by the person to whom the request is made, in order to carry out his or her responsibilities pursuant to this chapter. Any person providing information pursuant to this subdivision shall, at the request of the director, identify that portion of the information submitted to the department which is a trade secret and, upon the request of the director, shall provide documentation to support the claim of the trade secret. Information supplied which is a trade secret, as specified in Section 6254.7 of the Government Code, and which is so marked at the time of submission shall not be released to the public by the director, except in accordance with Section 1060 of the Evidence Code and Section 21160 of the Public Resources Code.

(e) The director shall give priority to the evaluation and

regulation of substances based on factors related to the risk of harm to public health, amount or potential amount of emissions, manner of usage of the pesticide in California, persistence in the atmosphere, and ambient concentrations in the community.

SEC. 2. Section 14023 of the Food and Agricultural Code is amended to read:

14023. (a) Upon completion of the evaluation conducted pursuant to Section 14022, the director shall, in consultation and with the participation of the State Department of Health Services, prepare a report on the health effects of the pesticide which may be determined to be a toxic air contaminant which poses a present or potential hazard to human health due to airborne emission from its use. The report shall assess the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors, of the substance. The report shall also contain an estimate of the levels of exposure which may cause or contribute to adverse health effects and, in the case where there is no threshold of significant adverse health effects, the range of risk to humans, resulting from current or anticipated exposure. The report shall include the findings of the State Department of Health Services. The report shall be made available to the public, subject to subdivision (d) of Section 14022.

(b) The report prepared pursuant to subdivision (a) shall be formally reviewed by the scientific review panel established according to Section 39670 of the Health and Safety Code. The director shall also make available the data deemed necessary to the scientific review panel, according to departmental procedures established to ensure confidentiality of proprietary information. The panel shall review, as appropriate, the scientific data on which the report is based, the scientific procedures and methods used to support the data, and the conclusions and assessments on which the report is based. The panel shall submit its written findings to the director within 45 days after receiving the report, but it may petition the director for an extension of the deadline, which may not exceed 15 working days.

(c) If the scientific review panel determines that the health effects report is seriously deficient, the report shall be returned to the director who shall revise and resubmit the report, within 30 days following receipt of the panel's determination, to the panel prior to development of emission control measures.

(d) Within 10 working days following receipt of the findings of the scientific review panel pursuant to subdivision (b), the director shall prepare a hearing notice and a proposed regulation which shall include the proposed determination as to whether a pesticide is a toxic air contaminant. After conducting a public hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director shall list, by regulation, pesticides determined to be toxic air contaminants.

(c) The director shall determine, in consultation with the State Department of Health Services, the State Air Resources Board, and the air pollution control districts or air quality management districts in the affected counties, the need for and appropriate degree of control measures for each pesticide listed as a toxic air contaminant pursuant to subdivision (d). Any person may submit written information for consideration by the director in making determinations on control measures.

SEC. 3. Section 14024 of the Food and Agricultural Code is amended to read:

14024. (a) For those pesticides for which a need for control measures has been determined pursuant to subdivision (e) of Section 14023 and pursuant to provisions of this code, the director, in consultation with the agricultural commissioners and air pollution control districts and air quality management districts in the affected counties, shall develop control measures designed to reduce emissions sufficiently so that the source will not expose the public to the levels of exposure which may cause or contribute to significant adverse health effects. Where no demonstrable safe level or threshold of significant adverse health effects has been established by the director, the control measures shall be designed to adequately prevent an endangerment of public health through the application of best practicable control techniques.

(b) Best practicable control techniques may include, but are not limited to, the following:

- (1) Label amendments.
- (2) Applicator training.
- (3) Restrictions on use patterns or locations.
- (4) Changes in application procedures.
- (5) Reclassification as a restricted material.
- (6) Cancellation.

(c) After conducting a public hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director shall adopt, by regulation, control measures, including application of the best practicable control techniques enumerated in subdivision (b) or any other best applicable control technique, for those pesticides for which a need has been determined.

SEC. 4. Section 14027 is added to the Food and Agricultural Code, to read:

14027. (a) Notwithstanding Section 12998, any person who violates any rule or regulation, emission limitation, or permit condition adopted pursuant to this article is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs. In assessing a civil penalty under this article, the court shall consider the appropriateness of the penalty with respect to the following factors:

- (1) The size of the business of the person being charged.

- (2) The gravity of the violation.
- (3) The good faith of the person being charged.
- (4) The history of previous violations.

Any money recovered under this section shall be paid into the Department of Food and Agriculture Fund for use by the department in administering this division and Division 6 (commencing with Section 11401).

(b) Liability may be imposed under subdivision (a) only if the department establishes that the violation was caused by an act which was the result of intentional or negligent conduct by the person accused of the violation.

SEC. 5. Section 39660 of the Health and Safety Code is amended to read:

39660. (a) Upon the request of the state board, the State Department of Health Services, in consultation with and with the participation of the state board, shall evaluate the health effects of and prepare recommendations regarding substances, other than pesticides in their pesticidal use, which may be or are emitted into the ambient air of California which may be determined to be toxic air contaminants.

(b) In conducting this evaluation, the State Department of Health Services shall consider all available scientific data, including, but not limited to, relevant data provided by the state board, the Occupational Safety and Health Division of the Department of Industrial Relations, international and federal health agencies, private industry, academic researchers, and public health and environmental organizations.

(c) The evaluation shall assess the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors, of the substance.

The evaluation shall also contain an estimate of the levels of exposure which may cause or contribute to adverse health effects and, in the case where there is no threshold of significant adverse health effects, the range of risk to humans resulting from current or anticipated exposure.

(d) The State Department of Health Services shall submit its written evaluation and recommendations to the state board within 90 days after receiving the request of the state board pursuant to subdivision (a). The State Department of Health Services may, however, petition the state board for an extension of the deadline, not to exceed 30 days, setting forth its statement of the reasons which prevent the department from completing its evaluation and recommendations within 90 days. Upon receipt of a request for extension of, or noncompliance with, the deadline contained in this section, the state board shall immediately transmit to the Assembly Committee on Rules and the Senate Committee on Rules, for transmittal to the appropriate standing, select, or joint committee of the Legislature, a statement of reasons for extension of the deadline,

along with copies of the department's statement of reasons which prevent it from completing its evaluation and recommendations in a timely manner.

(e) The state board or a district may request, and any person shall provide, information on any substance which is or may be under evaluation and which is manufactured, distributed, emitted, or used by the person of whom the request is made, in order to carry out its responsibilities pursuant to this chapter. To the extent practical, the state board or a district may collect the information in aggregate form or in any other manner designed to protect trade secrets.

Any person providing information pursuant to this subdivision may, at the time of submission, identify a portion of the information submitted to the state board or a district as a trade secret and shall support the claim of a trade secret, upon the written request of the state board or district board. Subject to Section 1060 of the Evidence Code, information supplied which is a trade secret, as specified in Section 6254.7 of the Government Code, and which is so marked at the time of submission, shall not be released to any member of the public. This section shall not be construed to prohibit the exchange of properly designated trade secrets between public agencies when those trade secrets are relevant and necessary to the exercise of their jurisdiction provided that the public agencies exchanging those trade secrets shall preserve the protections afforded that information by this paragraph.

Any information not identified as a trade secret shall be available to the public unless exempted from disclosure by other provisions of law. The fact that information is claimed to be a trade secret is public information. Upon receipt of a request for the release of information which has been claimed to be a trade secret, the state board or district shall immediately notify the person who submitted the information, and shall determine whether or not the information claimed to be a trade secret is to be released to the public. The state board or district board, as the case may be, shall make its determination within 60 days after receiving the request for disclosure, but not before 30 days following the notification of the person who submitted the information. If the state board or district decides to make the information public, it shall provide the person who submitted the information 10 days' notice prior to public disclosure of the information.

(f) The State Department of Health Services and the state board shall give priority to the evaluation and regulation of substances based on factors related to the risk of harm to public health, amount or potential amount of emissions, manner of usage of the substance in California, persistence in the atmosphere, and ambient concentrations in the community.

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APPENDIX III

United States Code: Section 7412

court of appeals could not find continuous monitoring requirement arbitrary as adjunct to nonarbitrary, noncapricious opacity standard, and thus, if on remand an opacity standard was retained, Agency, which issued new source performance standards for lime-manufacturing plants, could continue to require continuous monitoring. *Id.*

On remand of proceeding by limestone industry's trade association that challenged Agency's new source performance standards for lime-manufacturing plants, Agency had to consider representativeness for limestone industry as whole of tested plants on which it relied in determining that standards were achievable, and although this did not mean that Agency had to perform repeated tests on every plant operating within its regulatory jurisdiction, it did mean that due consideration had to be given to possible impact on emissions of recognized variations in operations and some rationale offered for achievability of promulgated standards given tests conducted and relevant variables identified. *Id.*

Where petitioners, which suggested that remand was necessary for legislative-type hearing on designation of asphalt concrete industry as "significant contributor" to air pollution within meaning of this section, failed to make proffer of specific issues and witnesses that allegedly could not be explored without hybrid rule-making procedures, there was no error in failure of Administrator to hold public hearing on "significant contributor" designation and proposed standards of performance for sources within that category under this chapter. *National Asphalt Pavement Ass'n v. Train*, 1976, 539 F.2d 775, 176 U.S.App.D.C. 296.

Administrator, in respect to the promulgation of stationary source emission standards for portland cement plants, adequately responded to the court of appeals' remand mandate to identify the bases for standards

Portland Cement Ass'n v. Train, 1975, 513 F.2d 506, 168 U.S.App.D.C. 248, certiorari denied 96 S.Ct. 469, 423 U.S. 1025, 46 L.Ed. 2d 399.

Record would be remanded for additional consideration and explanation by Administrator regarding reasonableness of opacity standards for sulfuric acid plants and coal-fired steam generators. *Essex Chemical Corp. v. Ruckelshaus*, 1973, 486 F.2d 427, 158 U.S.App.D.C. 360, certiorari denied 94 S.Ct. 1991, 416 U.S. 969, 40 L.Ed.2d 558.

Record would be remanded to Administrator for further consideration and explanation of adverse environmental effects of requiring a 4.0 lbs./ton standard for recycle acid plants, where the court of appeals could not conclude on basis of record before it that the Administrator met this obligation in promulgating a standard to be applied to recycle acid plants, and record evidence indicated that the standard was achievable only through use of a sodium sulfite-bisulfite scrubber, yet no consideration of significant land or water pollution potential resulting from disposal of 52 lbs./ton liquid purge by-product was apparent. *Id.*

Critical defect in the decision-making process in Agency promulgation of statutory source standard for new or modified portland cement plants in failing to make available to the manufacturers in timely fashion the test results and procedures used on existing plants which formed partial basis for the emission control level adopted, in failure to clearly identify the basis for the standards promulgated and in failure to respond adequately to the comments and technical objections of the cement manufacturers required that the matter remanded to the agency for further review. *Portland Cement Ass'n v. Ruckelshaus*, 1973, 486 F.2d 375, 158 U.S.App.D.C. 308, certiorari denied 94 S.Ct. 2628, 417 U.S. 921, 41 L.Ed.2d 226.

§ 7412. National emission standards for hazardous air pollutants

(a) Definitions

For purposes of this section—

(1) The term "hazardous air pollutant" means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the Administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) The term "new source" means a stationary source the construction or modification of which is commenced after the Administrator proposes regulations under this section establishing an emission standard which will be applicable to such source.

(3) The terms "stationary source", "modification", "owner or operator" and "existing source" shall have the same meaning as such terms have under section 7411(a) of this title.

(b) List of hazardous air pollutants; emission standards; pollution control techniques

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and shall from time to time thereafter revise) a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section.

(B) Within 180 days after the inclusion of any air pollutant in such list, the Administrator shall publish proposed regulations establishing emission standards for such pollutant together with a notice of a public hearing within thirty days. Not later than 180 days after such publication, the Administrator shall prescribe an emission standard for such pollutant, unless he finds, on the basis of information presented at such hearings, that such pollutant clearly is not a hazardous air pollutant. The Administrator shall establish any such standard at the level which in his judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant.

(C) Any emission standard established pursuant to this section shall become effective upon promulgation.

(2) The Administrator shall, from time to time, issue information on pollution control techniques for air pollutants subject to the provisions of this section.

(c) Prohibited acts; exemption

(1) After the effective date of any emission standard under this section—

(A) no person may construct any new source or modify any existing source which, in the Administrator's judgment, will emit an air pollutant to which such standard applies unless the Administrator finds that such source if properly operated will not cause emissions in violation of such standard, and

(B) no air pollutant to which such standard applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source—

(i) such standard shall not apply until 90 days after its effective date, and

(ii) the Administrator may grant a waiver permitting such source a period of up to two years after the effective date of a standard to comply with the standard, if he finds that such period is necessary for the installation of controls and that steps will be

taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

(2) The President may exempt any stationary source from compliance with paragraph (1) for a period of not more than two years if he finds that the technology to implement such standards is not available and the operation of such source is required for reasons of national security. An exemption under this paragraph may be extended for one or more additional periods, each period not to exceed two years. The President shall make a report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

(d) State implementation and enforcement

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing emission standards for hazardous air pollutants for stationary sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard under this section.

(e) Design, equipment, work practice, and operational standards

(1) For purposes of this section, if in the judgment of the Administrator, it is not feasible to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which in his judgment is adequate to protect the public health from such pollutant or pollutants with an ample margin of safety. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) For the purpose of this subsection, the phrase "not feasible to prescribe or enforce an emission standard" means any situation in which the Administrator determines that (A) a hazardous pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

(3) If after notice and opportunity for public hearing, any person establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such air pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

(4) Any standard promulgated under paragraph (1) shall be promulgated in terms of an emission standard whenever it becomes feasible to promulgate and enforce such standard in such terms.

(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as an emission standard for purposes of the provisions of this chapter (other than the provisions of this subsection).

(July 14, 1955, c. 360, Title I, § 112, as added Dec. 31, 1970, Pub.L. 91-604, § 4(a), 84 Stat. 1685, and amended Aug. 7, 1977, Pub.L. 95-95, Title I, §§ 109(d)(2), 110, Title IV, § 401(c), 91 Stat. 701, 703, 791; Nov. 9, 1978, Pub.L. 95-623, § 13(b), 92 Stat. 3458.)

Historical Note

Codification. Section was formerly classified to section 1857c-7 of this title.

1978 Amendment. Subsec. (e). Pub.L. 95-623 added par. (5).

1977 Amendment. Subsec. (a)(1). Pub.L. 95-95, § 401(c), substituted "causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness" for "may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness".

Subsec. (d)(1). Pub.L. 95-95, § 109(d)(2), struck out "(except with respect to stationary sources owned or operated by the United States)" following "implement and enforce such standards".

Subsec. (e). Pub.L. 95-95, § 110, added subsec. (e).

Effective Date of 1977 Amendment. Amendment by Pub.L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub.L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Pending Actions and Proceedings. Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under Act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub.L. 95-95 [Aug. 7, 1977], not to abate by reason

of the taking effect of Pub.L. 95-95, see section 406(a) of Pub.L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions. All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to Act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub.L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with Act July 14, 1955, as amended by Pub.L. 95-95 [this chapter], see section 406(b) of Pub.L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Exemption for Fort Allen in Puerto Rico. For provisions relating to the prohibition of an exemption from this section for Fort Allen in Puerto Rico, in its use as temporary housing for Haitian refugees, see section 1-102 of Ex.Ord. No. 12327, Oct. 1, 1981, 46 F.R. 48893, set out as a note under section 2601 of Title 22, Foreign Relations and Intercourse.

Legislative History. For legislative history and purpose of Pub.L. 91-604, see 1970 U.S. Code Cong. and Adm. News, p. 5356. See, also, Pub.L. 95-95, 1977 U.S. Code Cong. and Adm. News, p. 1077; Pub.L. 95-623, 1978 U.S. Code Cong. and Adm. News, p. 9088.

Cross References

Federally permitted release defined to include emissions into air subject to permit or control regulation under this section for purposes of Comprehensive Environmental Response, Compensation, and Liability Act of 1980, see section 9601 of this title.

Code of Federal Regulations

Emission standards for hazardous pollutants, see 40 CFR 61.01 et seq.

New stationary sources, standards of performance for, see 40 CFR 60.1 et seq.

Library References

Health and Environment § 25.6(1) et seq., C.J.S. Health and Environment §§ 91, 93, 94, 96 to 113, 125, 126, 127, 130, 131, 134 to 138, 140 to 155.

§ 7413. Federal enforcement procedures

(a) Finding of violation; notice; compliance order; civil action; State failure to enforce plan; construction or modification of major stationary sources

(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such finding. If such violation extends beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the 30th day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement of such plan with respect to any person—

(A) by issuing an order to comply with such requirement, or

(B) by bringing a civil action under subsection (b) of this section.

(3) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 7411(e) of this title (relating to new source performance standards), section 7412(c) of this title (relating to standards for hazardous emissions), or section 1857c-10(g) of this title (relating to energy-related authorities) is in violation of any requirement of section 7414 of this title (relating to inspections, etc.), he may issue an order requiring such person to comply with such section or requirement, or he may bring a civil action in accordance with subsection (b) of this section.

(4) An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State

INCLUDES THE LAWS OF THE 98TH CONGRESS, SECOND SESSION (1984)

Note 5

rate, would not be retroactively applied to asphalt concrete facility, the renovation of which was completed prior to adoption of the regulation; regulation was not merely clarification of existing Environmental Protection Agency policy, but represented abrupt departure from prior law, and, furthermore, no overwhelming public interest justified retroactive application. *U.S. v. Narragansett Imp. Co.*, D.C.R.I.1983, 571 F.Supp. 688.

8. New source defined

Renovation of existing asphalt concrete facility to replace filter bag house with electrostatic precipitator did not constitute "construction" of "new source," under this section, so as to impose upon facility requirements of new source performance standards, at least where the renovation resulted in no material increase in production capacity or in amount or type of particulate matter emissions. *U.S. v. Narragansett Imp. Co.*, D.C.R.I.1983, 571 F.Supp. 688.

9. Stationary source defined

Environmental Protection Agency regulation allowing states to treat all pollution-emitting devices within same industrial grouping as though they were encased within single "bubble" was based on permissible construction of term "stationary source" in the subsec. a of this section. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, U.S.Dist.Col.1984, 104 S.Ct. 2778, rehearing denied 105 S.Ct. 28, 29.

32. Standards applicable

Renovation of existing asphalt concrete facility to replace filter bag house with electrostatic precipitator did not constitute "modification" of facility so as to invoke application of new source performance standards, where renovation not only did not increase amount or type of particulate matter emissions, but probably resulted in net decrease in particulate emission rate. *U.S. v. Narragansett Imp. Co.*, D.C.R.I.1983, 571 F.Supp. 688.

§ 7412. National emission standards for hazardous air pollutants

Westlaw Administrative Law References

Databases: CFR FR

Sample Query:

(42 + § 7412(B)) (112(B) + 6 "CLEAN AIR ACT")

Query Formulation: see Explanation Page.

Notes of Decisions

Emission standard 2

Rules and regulations 1

1. Rules and regulations

Environmental Protection Agency regulations which govern emergency discharges of vinyl chloride and which require compliance with work practices set out by the Agency were work practice standards, despite their designation as emissions standards, and because the regulations were promulgated prior to the 1977 amendments to this chapter which authorized the Administrator to enforce work practice standards, the regulations

were unenforceable by the district court. *U.S. v. Ethyl Corp.*, D.C.La.1983, 576 F.Supp. 80.

Administrator, who failed to follow timetable of subsec. (b)(1)(B) of this section with respect to publishing of proposed regulations establishing emission standards for inorganic arsenic after listing it as a hazardous air pollutant pursuant to subsec. (b)(1)(A) of this section, would be ordered to publish regulations within 180 days of the date of the order. *State v. Gorsuch*, D.C.N.Y.1983, 554 F.Supp. 1060.

2. Emission standard

Under this chapter, an emission standard is to be distinguished from a work practice standard; an emission standard is a quantitative level to be attained by use of techniques, controls, and technology, and when it is not feasible to prescribe or enforce an emission standard, Administrator of the Environmental Protection Agency is authorized to enact a design, equipment, work practice, or operational standard. *U.S. v. Ethyl Corp.*, D.C. La.1983, 576 F.Supp. 80.

§ 7413. Federal enforcement procedures

Federal Practice and Procedure

Requirements for issuance of declaratory judgment in matters involving public law, see *Wright, Miller & Kane: Civil 2d* § 2763.

West's Federal Forms

Jurisdiction and venue in district courts, matters pertaining to, see § 1003 et seq.

Preliminary injunctions and temporary restraining orders, matters pertaining to, see § 5271 et seq.

Sentence and fine, see § 7531 et seq.

Code of Federal Regulations

Delayed compliance orders, see 40 CFR 65.01 et seq.

Westlaw Administrative Law References

Databases: CFR FR

Sample Query:

(42 + § 7413(C)) (113(C) + 6 "CLEAN AIR ACT")

Query Formulation: see Explanation Page.

Notes of Decisions

Compliance orders

Variance 11a

3. State and local regulation or control

Violation of provisions of this chapter Administrator to require person to sample and report emissions is unaffected by defendant's cooperation with state, even though it may affect court's determination of amount of civil penalty to be levied.

APPENDIX IV

- Monitoring Request Letter
- Monitoring Recommendation Letter

Memorandum

To : Jananne Sharpless
Air Resources Board
1102 Q Street
Sacramento, CA 95814

Date : March 24, 1986

Place : Sacramento

From : Department of Food and Agriculture -1220 N Street
Sacramento, CA 95814

Subject: AB 1807 Tanner (Division 7, Chapter 3, Article 1.5 of the Food and Agricultural Code) Reference 2320

Pursuant to the requirements of the Food and Agricultural Code, the Department requests that the Air Resources Board document airborne emission levels resulting from pesticidal uses of ethylene oxide.

We will anticipate submission of this data in June, 1987.

Original signed by
Hans Van Nes
Deputy Director

Clare Berryhill
Director
(916) 445-7126

cc: Lori Johnston
Bob Peterson
Keith Pfeifer
Peter Venturini
Bill Loscutoff
Bob Barham
Alex Kelter
Mike Lipsett

Memorandum

William Loscutoff, Chief
Toxics Pollutant Branch
Air Resources Board
1102 Q Street
Sacramento, California 95814

Date : March 24, 1986

Place : Sacramento

From : Department of Food and Agriculture - 1220 N Street
Sacramento, CA 95814

Subject: ARB Monitoring for Ethylene Oxide (Reference 2320)

In order to fulfill requirements of the AB 1807 (Tanner) process (Food and Agriculture Code, Division 7, Chapter 3, Article 1.5), the California Department of Food and Agriculture requests that the ARB document the level of airborne emissions of ethylene oxide. In this memorandum, we have provided some background information on ethylene oxide and identified areas which we believe will yield information on the levels of public exposure.

Ethylene Oxide Characteristics and Registration Status

Ethylene oxide is a flammable, toxic gas which is used as a fumigant, sterilant and chemical feedstock. As a fumigant, ethylene oxide is used for the control of microorganisms and insect infestation in ground spices and other processed natural seasoning materials. Ethylene oxide is used extensively as a sterilant for medical instruments and in the manufacture of sterile supplies. As a feedstock, ethylene oxide is used in the synthesis of commercial chemicals such as ethylene glycol and three substances which are registered economic poisons. These substances, ethylene oxide adduct nonyphenol, ethylene oxide alkylated cresol condensate, and ethylene oxide condensate of abietylamine (tributyltin chloride complex), do not break down into ethylene oxide and are considered separate active ingredients.

The acute toxic health effects of ethylene oxide exposure include acute respiratory and eye irritation, vomiting and diarrhea. Chronic effects consists of respiratory irritation, anemia, altered behavior and a loss of the sense of smell. In addition, the EPA has cited evidence of mutagenicity and possible reproductive effects, and the American Conference of Governmental and Industrial Hygienists (ACGIH) classifies ethylene oxide as an "industrial substance of high carcinogenic potential." Because of its potential hazard to health, a 1 ppm threshold limit value-time weighted average (TLV-TWA) exposure limit in air was adopted by ACGIH specifically to protect the health of employees in the workplace.

Presently, four registrants produce the twelve ethylene oxide products registered in California. All twelve product labels specify the contents are for medical and industrial use only. Two products are registered for use on "ground spices and other processed natural seasoning materials", a use described in Section 193.200 of Title 21 of the Code of Federal Regulations (CFR). This CFR section establishes a 50 ppm residue tolerance in food for ethylene oxide.

Ethylene oxide is not a restricted material and because of this there is no requirement to report its use through the pesticide reporting system administered by the County Agricultural Commissioners. Therefore, the Department of Food and Agriculture has no ethylene oxide use data which can serve as the basis for determining where monitoring for potential emissions can best be undertaken. However, CDFA has identified two sources of information regarding the industrial and medical use of ethylene oxide: Cal-OSHA and the ARB have compiled lists of employers who use ethylene oxide. The Cal-OSHA list is compiled in accordance with Part 10 (commencing with Section 9000), Division 5 of the Labor Code and is titled "Carcinogen Registration List--Employers That Use Ethylene Oxide." This list also identifies several food processors who fumigate "ground spices and other natural seasoning materials." Unfortunately, no data on the amount of ethylene oxide which is actually used is available from this source. The ARB and the individual Air Quality Control Districts have conducted surveys to identify sources of ethylene oxide emissions. The Emissions Inventory Branch of the ARB has estimated ethylene oxide emissions from various industrial and medical sources in their "Preliminary Inventory--Substances of Special Interest."

After a review of these two data sources, which are the best we are aware of, we have concluded that hospitals represent the largest percentage of employers who use ethylene oxide. Because hospitals are major users and because they are generally located in areas where emissions could easily impact the human population (urban areas), we feel the ARB should first concentrate on quantifying emissions from this source. Therefore, we recommend that the ARB establish levels of public exposure in downtown Los Angeles, an area of high hospital concentration as indicated on the attached map.

We feel the level of public exposure from food processors should also be characterized. Since there are no data sources which quantify the amount of ethylene oxide used by food processors, we further recommend that the ARB establish levels in Salinas, a community where a major food processor utilizes ethylene oxide to fumigate "ground spices and other processed natural seasoning materials."

CDFA wishes to point out the following limitations in regard to sample collection and analysis for ethylene oxide:

1. The collection of ethylene oxide should not take place on sampling media (charcoal, XAD, etc.) because of the short lifetime of ethylene oxide on such media and the effect of water on collection efficiency.
2. Real time, gas phase monitoring, either by long path infrared detection or syringe injection into a gas chromatograph should be used.
3. Monitoring should be conducted during maximum venting or usage of ethylene oxide (peak concentrations).
4. At least four replicate samples should be run.

William Loscutoff
Page 3
March 24, 1986

5. Personnel at the Statewide Air Pollution Research Center at UC Riverside feel that the lifetime of ethylene oxide in downtown Los Angeles will have a lower limit of 3 weeks to one month. This means that ethylene oxide will be long-lived in the Los Angeles area and concentrations may build during an inversion episode.

In the event that the actual monitoring of public exposure is not possible due to limitations in the available technology, we would be willing to work with the ARB to determine the best alternatives to actual monitoring data.



Ronald J. Oshima
Branch Chief
Environmental Monitoring
& Pest Management, Room A-149
(916) 324-8921

Attachment

cc: Peter Venturini
Bob Barham
Ralph Propper
Lynn Baker
Lori Johnston

APPENDIX V

Scientific Review Panel Membership

MEMBERS OF THE SCIENTIFIC REVIEW PANEL

Dr. Lawrence Brunton
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MEMBERS OF THE SCIENTIFIC REVIEW PANEL, CONT'D

Dr. Joyce McCann
1235 Glen Avenue
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Dr. James N. Pitts
Director, Statewide Air Pollution
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Riverside, CA 92521-0312

One additional member to be appointed.